



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT**  
ECONOMIC AND SCIENTIFIC POLICY **A**



Economic and Monetary Affairs

Employment and Social Affairs

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**Internal Market and  
Consumer Protection**

# Reducing Costs and Barriers for Businesses in the Single Market

Study for the IMCO Committee





European Parliament

DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

# Reducing Costs and Barriers for Businesses in the Single Market

STUDY

## Abstract

The study points that reducing business costs and regulatory and market barriers is necessary to complete the Single Market. However, monitoring of barriers and costs in the EU is piecemeal and unsystematic, quantification and clear identification of barriers and costs is lacking, which makes prioritisation of policy actions difficult. Resulting costs of slow reform process and vague initiatives with uncertain time horizons in the area of e-commerce alone amount to **€748 billion**. As indicated by examples of Estonia and South Korea, **ICT and e-government** can be particularly efficient in reducing these costs and barriers.

The study was prepared for Policy Department A at the request of the Internal Market and Consumer Protection Committee.

This document was requested by the European Parliament's Committee on Internal Market and Consumer Protection.

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Original: EN

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Manuscript completed in February 2016  
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## LIST OF ABBREVIATIONS

<b>AEO</b>	Authorised Economic Operator
<b>API</b>	Application Programming Interface
<b>DSM</b>	Digital Single Market
<b>EC</b>	European Commission
<b>ECHA</b>	European Chemicals Agency
<b>EEA</b>	European Economic Area
<b>EIF</b>	European Interoperability Framework
<b>EPRS</b>	European Parliamentary Research Service
<b>EU</b>	European Union
<b>ISO</b>	International Organization for Standardization
<b>LSP</b>	Large Scale Pilot
<b>MCC</b>	Modernised Customs Code
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OTT</b>	Over The Top (applications and content)
<b>PMR</b>	Product Market Regulation
<b>REACH</b>	Registration, Evaluation and Authorization of Chemicals
<b>RFID</b>	Radio Frequency Identification
<b>SCM</b>	Standard Cost Model
<b>SMA</b>	Single Market Act
<b>STORK</b>	Secure idenTity acrOss boRders linKed
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UCC</b>	Union Customs Code

**UGAP** Union des Groupements d'Achats Publics

**UTP** Unfair Trade Practice

**VAT** Value Added Tax

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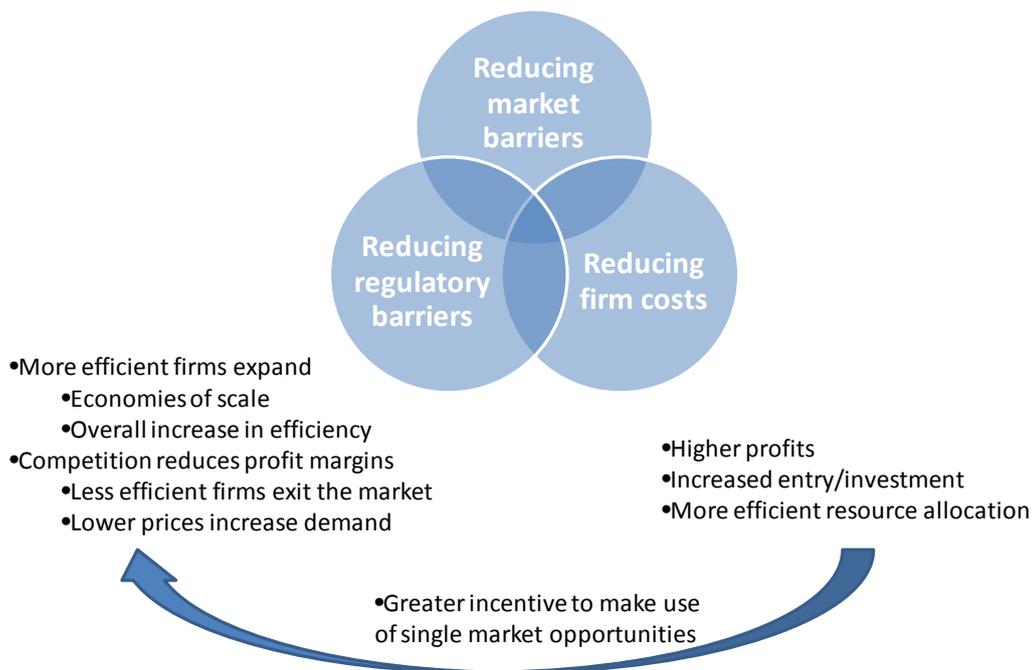
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## EXECUTIVE SUMMARY

### Background

Removing barriers and lowering costs increases aggregate welfare ultimately through increased economy-wide productivity and innovation<sup>1</sup>. The aggregate welfare effect is caused by the presence of economies of scale that are available to firms that operate outside their own country and the increase in competition that is engendered by European firms' ability to operate across borders. As a result, the completion of the Single Market benefits some businesses, namely the most competitive and innovative ones, but all consumers through lower prices and increased choice.

**Figure 1: The effects of Single Market policies**



Source: LE Europe.

### Barriers & costs

Reducing business costs and regulatory and market barriers is necessary to complete the Single Market. However, the monitoring of barriers and costs in the EU is piecemeal and unsystematic, quantification and clear identification of barriers and costs is lacking, which makes prioritisation of policy actions difficult.

Existing evidence points to significant **market barriers** in the form of technical location restrictions and de facto discrimination based on country of residence; anticompetitive conduct and unfair trading practices, and a lack of access to information and redress mechanisms. Barriers to the Digital Single Market include frictions in cross-border payments and deliveries, technical restrictions on accessing content in other member states (geo-blocking) and consumer discrimination in cross border transactions, warranting an urgent policy response

**Regulatory barriers**, resulting mainly from fragmentation of the Single Market due to different national legal frameworks, continue to affect the markets for services and

<sup>1</sup> See the detailed exposition in Mariniello et al. (2015).

products, as well as narrower areas such as VAT and customs. The reduction of national-level regulatory barriers can be coordinated at the EU level, so as to prevent divergent national responses that may raise new barriers.

While in principle harmonisation of national legislation at the EU level lowers regulatory barriers and costs resulting from the fragmentation of the Single Market into 28 different national legal systems, such harmonisation needs to be based on careful qualitative and quantitative evaluation, as inefficient/high-cost or ineffective legislation at the EU level may itself create regulatory barriers and unnecessary costs.<sup>2</sup>

Compliance with national taxation and customs rules imposes by far the greatest administrative burden on European businesses, estimated at **€87bn by the High-level Group on Administrative Burdens** in 2014. Clearly, a trade-off may be involved as some costs are necessary to ensure the right regulation is in place to enable the Single Market. However the level of such costs is constantly evolving, as a result of technological progress allowing for substantial reductions of compliance costs.

**Missing e-government and a lack of coordination of e-government solutions** at the European level (which can lead to market fragmentation) is **a key barrier** to Single Market integration across sectors and **a substantial cost factor**.

The body of research on the 'cost of non-Europe' together with more targeted research can be combined in an attempt to quantify the cumulative effect of barriers in the Single Market. A more precise measurement of the magnitude of existing barriers is not currently available to European policy makers.

**The Digital Single Market, the Single Market for services, product market and sector regulation, and public procurement** should receive priority attention owing to the size of benefits that can be expected if the Single Market in these areas were completed.

**The Digital Single Market** is held back by both **regulatory and market barriers**. Priority actions relate to the **lowering of market barriers and transaction costs** and the **creation of enabling frameworks (e-government)** to promote Europe-wide economic activity in the digital sector and the wider economy.

Exercises like the identification of the **'ten most burdensome regulations for SMEs'** and the stocktaking of administrative burdens undertaken for the **'Cutting Red Tape in Europe'** report should be performed on an ongoing basis, using a consistent methodology.

### Priority areas for Single Market policy

The available evidence on the 'cost of non-Europe' and similar research can be seen as a quantification of the **cumulative barriers by policy area**, where 'policy area' is a pragmatic concept that ranges from the tangible and specific (public procurement) to the broad and artificial<sup>3</sup> (Digital Single Market). The following table shows the high-level policy areas in order of magnitude. A more precise measurement of the magnitude of existing barriers is not currently available to European policy makers.

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<sup>2</sup> Muller P. et al., *Smart Single Market Regulation*, study for the Committee on the Internal market and Consumer Protection, 2015

[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/563442/IPOL\\_STUD\(2015\)563442\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/563442/IPOL_STUD(2015)563442_EN.pdf)

<sup>3</sup> In the sense that it doesn't correspond to a well-defined set of economic activities.

**Table 1: Priority policy areas by magnitude of potential benefit**

No.	Policy area	Benefits from reducing costs & barriers (savings and contributions to growth)
1.	<b>Digital Single Market</b>	<p>Potential GDP gains from completing the Digital Single Market: €415bn per year<sup>1)</sup></p> <p>Up to 4% increase in EU GDP over 2010-2020 resulting from completing the Digital Single Market.<sup>2)</sup></p>
2.	<b>Services</b>	<p>Potential GDP gains from closing gaps in the EU Single Market in free movement of services: €338bn<sup>3)</sup></p> <p>0.8-2.6% increase in EU GDP in the long run since adoption of the directive resulting from its full implementation and enforcement.<sup>4)</sup></p> <p>EUR 100-304 billion in savings in total resulting from full implementation of the Services Directive.<sup>5)</sup></p>
3.	<b>Product market regulation</b>	<p>Cost of non-Europe in free movement of goods: 183bn per year<sup>6)</sup></p> <p>2.2-3.3% increase in EU GDP in 2005 resulting from goods market integration over the 1960-2000 period; and 2.2-8.8% increase in EU GDP in the very long run –resulting from full integration of goods markets.<sup>7)</sup></p> <p>Increase of EUR 183-269 billion in the total value of merchandise exports between Member States in the long term resulting from removal of barriers to FDI and non-tariff barriers within the internal market for goods.<sup>8)</sup></p> <p>1.8% increase in EU GDP resulting from perfect operation of Regulation 764/2008 (mutual recognition).<sup>9)</sup></p>
4.	<b>Public procurement</b>	<p>Potential GDP gains from closing gaps in the EU Single Market: e-procurement: €100bn per year<sup>10)</sup></p> <p>Public procurement and concessions: €36bn per year<sup>11)</sup></p> <p>Administrative burden of procurement procedures €216.3m per year<sup>12)</sup></p> <p>Potential efficiency gains in through greater cooperation/ efficiency gains in the defence industry: €10bn per year<sup>13)</sup></p> <p>0.1-0.5% increase in EU GDP over 2011-2021 resulting from savings related to public procurement directives (prior to revision), if the directives applied to all EU public procurement.<sup>14)</sup></p> <p>Potential savings of EUR 36.5-66.5 billion annually resulting from closure of remaining gaps in EU public procurement legislation.<sup>15)</sup></p>

**Source:** 1) Dunne, J. (Ed.) (2015). p. 16. This is the entire 'cost of non-Europe' in the Digital Single Market. 2) Alleweldt et al. (2014), Table 3, p. 16. 3) Pataki (2014), Table 1, p. 9. 4) Alleweldt et al. (2014), Table 3, p. 17. 5) Alleweldt et al. (2014), Table 3, p. 17. 6) Pataki (2014) Table 1, p. 9. 7) Alleweldt et al. (2014), Table 3, p. 16. 8) Alleweldt et al. (2014), Table 3, p. 16. 9) Alleweldt et al. (2014), Table 3, p. 17. 10) Pataki (2014) Table 2, p. 9.

11) Pataki (2014) Table 1, p. 9. 12) See High Level Group on Administrative Burden (2014), p. 33. 13) Dunne, J. (Ed.) (2015). p.78 14) Alleweldt et al. (2014), Table 3, p. 17. 15) Alleweldt et al. (2014), Table 3, p. 17.

Smart regulation requires that strategic priorities focus on the policy areas indicated by the ranking of quantified impacts: Digital Single Market, services, product market regulation and public procurement. Within these priority areas, the barriers and costs discussed above should be addressed as directly and as efficiently as possible.

### Priority area 1: Digital Single Market

The Digital Single Market is held back by both regulatory and market barriers. Priority actions relate to the **lowering of market barriers and transaction costs** and the **creation of enabling frameworks (e-government)** to promote Europe-wide economic activity in the digital sector and the wider economy.

In terms of market barriers, technical restrictions on accessing content in other member states (geo-blocking) and consumer discrimination in cross border transactions warrant an urgent policy response. **Consumers** are not achieving the full benefits of the Digital Single Market. Price-discrimination based on country of residence is widespread, adding to a trust deficit in relation to e-commerce, exacerbated by uncertainty about consumer rights and dispute resolution procedures.

In terms of enabling frameworks, comprehensive and coordinated e-government is crucial, as a measure to directly reduce unnecessary compliance costs for businesses and administrative costs for government; and as a catalyst for cross-border trade and mobility; and a tool to improve access to information for business, consumers and government.

**Digitisation gaps** are evident in the governance of many member states and European institutions. While some member states (EE, FR, NL) are at a more advanced stage, issues such as the slow adoption of e-government tools and lack of adherence to the 'digital by default' paradigm in rulemaking and administration, including insufficient use of open data and advanced analytics are still acute. A European e-ID solution could greatly facilitate progress in this area.

Building on existing solutions such as Your Europe and SOLVIT, European solutions (including harmonisation of existing national frameworks) should be attempted subject to condition that compliance obligations and effective national solutions are not duplicated, but instead market fragmentation due to divergent national approaches is remedied, while using the most efficient tools available. Customs, VAT, business registers, and monitoring of consumer discrimination are obvious candidates for comprehensive European e-government solutions.

### Priority area 2: services

**Services** have not kept pace with goods in the realisation of the European Single Market. A multitude of restrictions persists, including occupational licensing, rules on establishment, and sector specific rules (restrictions on retail formats, contracts, liability and insurance rules for professional services, the lack of common training frameworks).

The problem is exacerbated by the fact that services that traditionally could only be provided locally and were therefore not tradable across borders have moved online.

The policy response – as the services market – is multifaceted, encompassing the recognition of professional qualifications, local planning laws and overlapping to an increasingly large degree with the Digital Single Market programme, as many services can be efficiently traded online. Achieving a Single Market for services is a complex undertaking, as it touches upon a large number of policy fields where the consensus of member states is needed. Key actions include:

- Removal of anti-competitive legislation that harms the interests of foreign entrants, size limitations on retail outlets and local zoning; restrictions on opening hours; and barriers to the freedom of sourcing;
- Standardisation of contracts, liability and insurance rules for professional services; creating a level playing field in public procurement;
- As well as more generally the enforcement of competition law; the harmonisation of rules and regulations; and the transposition of relevant EU Directives, and especially the Services Directive.
- Common training frameworks (professional card)
- Mutual recognition (services passport)
- Abolishing unnecessary rules on company ownership for professionals.

### Priority area 3: product market regulation

Product market regulation differs across member states: while some European countries have highly liberalised product markets (AU, DK, NL, UK) by international standards, others still maintain substantial restrictions. Both the level of **restrictions** and the **differences between member states** are barriers to the Single Market.

Measures that complete the Single Market in the areas of harmonisation of product market regulation, the Digital Single Market and the Single Market for services are likely to yield **very substantial benefits**, but require concerted actions across different policy fields.

Harmonisation at a low level of restrictiveness (towards the most open regimes found in countries such as the UK and the Netherlands) is the adequate regulatory response to foster further market integration and trans-European competition.

The largest contribution to closing the gap to the best performing member state in terms of productivity would be in: real estate (14.9%), construction (6.4%), education (6.0%), Public administration and defence (5.8%); Health and social work (4.6%), retail (4.3%) and wholesale (3.2%) trade and professional services (3.9%).<sup>4</sup>

### Priority area 4: public procurement

**Public procurement** is a large part of the economy and an important channel for the economic integration of Europe. The share of public-sector contracts in which a bidder from another member state is successful is below 20% for most member states. While authorities that assign the greatest importance to attracting foreign bidders are most likely to use an open procedure, different forms of restricted procedure are still common, while open procedures tend to be used for lower contract values.

Overall the priority actions are:

- Extend the scope of Directives 2004/17 and 18 to cover network industries (water, energy, transport, telecommunications and postal services), financial services, and broadcast media.
- Ensure universal use of e-procurement (to foster competition and alleviate administrative burden from procedures for the award of public contracts (public works, supply and service contracts))

<sup>4</sup> See LE and PwC (2013). 'Study on 'The cost of non-Europe: the untapped potential of the European Single Market'', Table 4, p. 28.

- Implement Directive 2009/81 (universal applicability of negotiated procedure with publication in defence procurement)

**Stocktaking of current initiatives**

The **Single Market** represents one of the key achievements of the European Union and positions the EU as a global player in the world economy. While many of the Single Market’s benefits are already visible, **further benefits will only materialise if remaining barriers are removed.**

European policy to complete the Single Market needs to be improved. The link between activities and outcomes is often vague. Too often, no clear timetable is given for when impacts on the Single Market can be expected once the first steps have been taken.

The problem starts with the lengthy legislative process in the EU. The minimum length of time between an initial policy action at the EU level and the earliest date on which real impact can be expected is 44 months and appears to be increasing.

The ‘**cost of slow Europe**’ is the cumulative ‘cost of non-Europe’ accrued between the identification of the need for policy action and regulatory measures having an impact on businesses operating in the Single Market. Given often vague initiatives by the EC, the lengthy legislative process, and the common delays in transposition and implementation of Directives, the cost of slow Europe adds up to large multiples of the headline figures familiar from the cost of non-Europe reports. Taking the Commission’s activities under the Digital Single Market Strategy in the area of e-commerce as an example, the cost of slow Europe is equal to the cost of non-Europe (€204m billion) x the average length of legislative process (3.6 years) from the year of first legislative proposal (2015) = €748 billion.

**Table 2: Cost of slow Europe for e-commerce: €748 billion**

Digital Single Market Strategy for Europe (May 2015)**	Upgrading the Single Market: more opportunities for people and business (October 2015)***	Timetable envisaged by strategy		
Legislative proposals for better cross-border contract rules for consumers and businesses		REVIEW	LEGISLATIVE PROPOSAL	SINGLE MARKET IMPACT
A wide ranging review to prepare legislative proposals to tackle unjustified Geo-blocking	Legislative proposals to prevent discrimination against consumers based on nationality or location	2015		20??
	Initiatives to modernise the intellectual property rights (IPR) framework, including a review of the EU IP enforcement framework	2015	2016	20??
Competition sector inquiry into e-commerce: online trade in goods + services	Final report of inquiry - 2017		2016/17	20??
Comprehensive analysis of the role of platforms in the market including illegal content on the Internet	Guidance on how EU law applies to collaborative economy business models	2015	2017	20??
Legislative proposals to reduce the administrative burden on businesses from different VAT regimes	Comprehensive simplification package for SMEs as part of the VAT Action Plan	2015	2016	20??
Review the Audiovisual Media Services Directive			2016	20??
Review of the Satellite and Cable Directive		2015/16		20??

Activity with foreseeable impact on the single market

Activity with uncertain impact on the single market

Source: LE Europe based on \*"Mapping the Cost of Non-Europe, 2014 -19" (3rd edition, April 2015); \*\*"Roadmap for completing the Digital Single Market" (May 2015); and \*\*\*"Upgrading the Single Market" (October 2015).

Overall, vague initiatives with uncertain time horizons are too common in the EC’s policy programme. The cost of slow Europe, i.e. the cost of delaying impactful action, together

with the lack of a clear focus on costs and barriers (likely a result of insufficient visibility/quantification of specific barriers) continue to present a formidable challenge.

**Table 3: Priority action areas and activities**

No.	Priority action area	Progress overview
1.	<b>Digital Single Market</b>	<p>Ongoing: 16 initiatives run until end of 2016. e-ID is not yet interoperable across the EU.</p> <p>E-government: Ongoing, but mostly in pilot stage. Benefits will start to materialise with the introduction of interoperable solutions which are still being developed.</p> <p>An EU-wide Online dispute resolution platform is expected to be operable in 2016.</p> <p>Review of the Regulation on Consumer Protection Cooperation planned for 2016, as are measures in the area of parcel delivery; initiatives on data ownership, free flow of data (e.g. between cloud providers) and on a European Cloud; a review of the Audiovisual Media Services Directive; and legislative proposals to reform the current telecoms rules*</p>
2.	<b>Services</b>	No coherent push for Single Market for services, although considerable overlap with Digital Single Market initiatives
3.	<b>Product market regulation</b>	Better regulation initiative and REFIT. However, there is a risk that without effective coordination between the various institutions involved in the legislative process, an evaluation by REFIT standards may just add another layer of bureaucracy.
4.	<b>Public procurement</b>	Current initiatives in e-procurement are very broad but too slow in their implementation.
5.	<b>Implementation of existing Directives</b>	Incentives to monitor progress of EU legislation. Policy assessments will be planned for at every stage of the policy cycle. Being rolled out. Benefits will materialise during evaluation phases of new policies (usually 3-5 years after implementation).

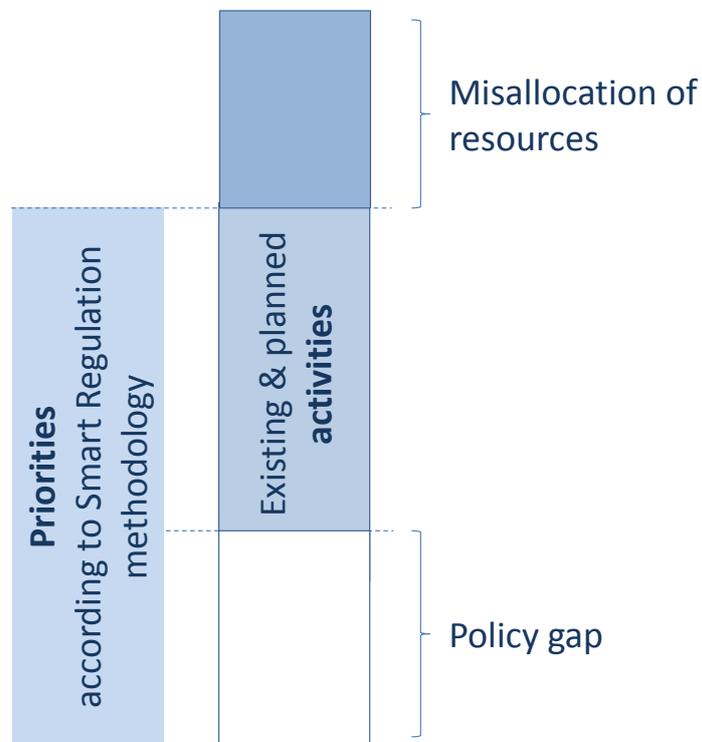
**Source:** \* Roadmap for completing the Digital Single Market

Applying **smart regulation practices**, as recommended in London Economics (2015), to measures aimed at reducing costs and barriers for businesses in the Single Market will lead to the appropriate **prioritisation of activities**. Smart regulation requires policies to be evaluated on the basis of costs and benefits, and to **target efforts strategically** at those

areas where the highest benefits can be expected. The table above shows that prioritisation of policy measures according to expected benefits (methodology for smart regulation as developed in the study on Smart Single Market Regulation) is not uniformly practiced.

The lack of attention to services and product market deregulation appears to present a serious policy gap, in which the measures proposed above could yield substantial benefits. While there is no evidence of systematically inappropriate priorities, the targeting of much policy attention on the Digital Single Market risks diverting policy resources from the non-digital economy.

**Figure 2 Smart vs. existing regulation**



**Source:** LE Europe

Further general initiatives of EU legislation are taking steps towards '**better regulation**' standards. Current general initiatives (e.g. better regulation initiative with REFIT, application of scoreboards) aim at providing a solid basis for performance and evidence based smart regulation. The well-functioning of these initiatives importantly contributes to the reduction in red tape.

### The potential of IT and e-government solutions

**Ubiquitous services** – i.e. electronic solutions that are available anywhere and at any time – are likely to be key facilitators in reaching **interoperability** across EU administrations.

Learning from **international experiences** - South Korea and Estonia – important reductions in **transaction costs** can be achieved through the effective use of interoperable and decentralized **e-government solutions**. A fully integrated e-Europe is likely to bring about similar savings. Whilst public administrations would save costs through digitization, the biggest benefits are likely to derive from **time savings** and **better quality services**

for all **citizens and businesses**. The following table provides examples of cost reductions achieved through e-government in Korea.

**Table 4: Examples of the reductions in transaction costs from e-Korea**

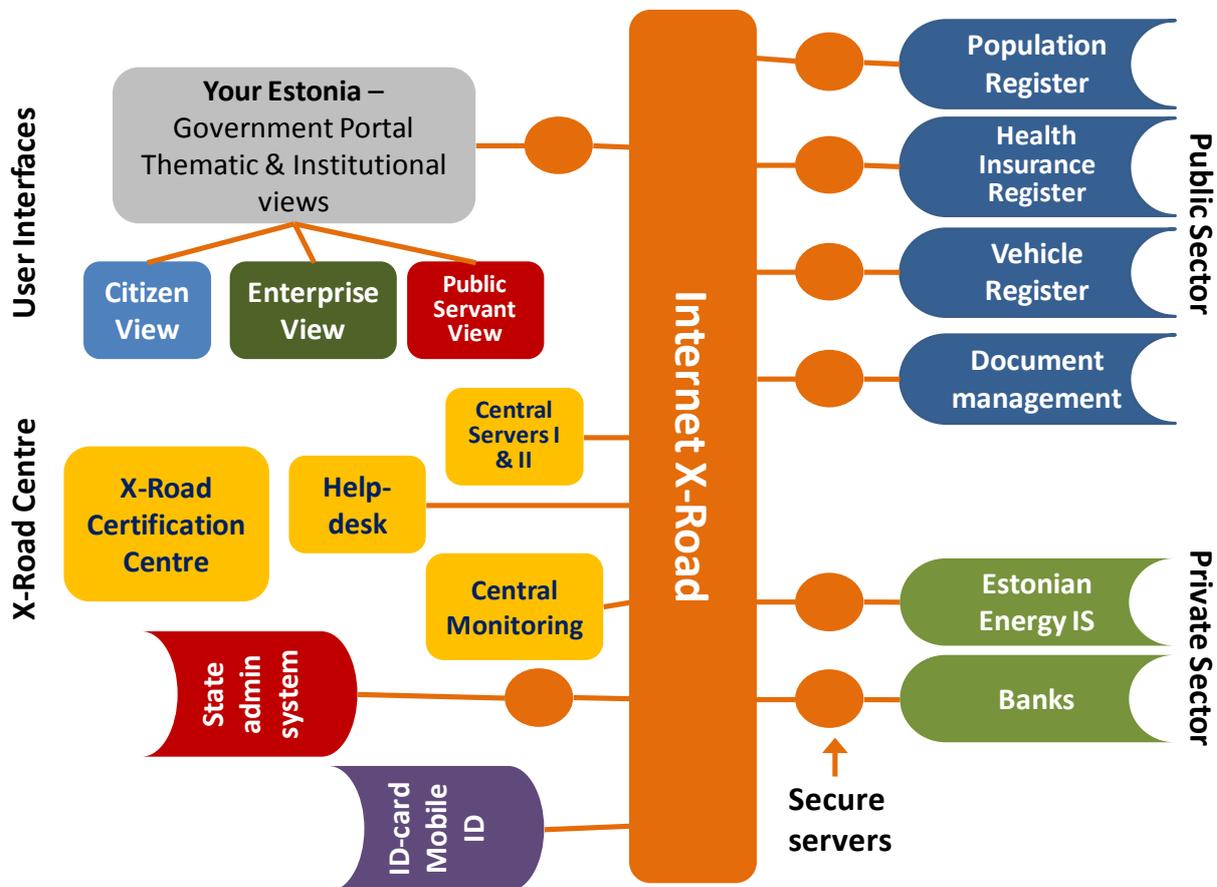
Service	Example of savings
<b>Comprehensive Tax System</b>	All tax affairs can be handled from a distance. Citizens visiting the tax office fill in forms using <b>electronic pens</b> thus limiting the amount of data to be entered manually. In 2008, <b>savings</b> were estimated to amount to KRW 150 billion (approx. €90 million) for the <b>government</b> and KRW 400 billion (approx. €240 million) for <b>citizens</b> due to faster processes, reduced printing, posting and travel costs.
<b>Government Integrated Data Center (GIDC)</b>	The portal is responsible for all IS management. Due to technological progress in data handling, security and error management, the system now runs in a stable manner 24/7. In fact, <b>error response times have been reduced from 67 minutes to 4.8 seconds</b> .
<b>e-Customs Clearance System</b>	Massive time and <b>cost savings</b> are achieved through fully automatic customs saving KRW 3.8 trillion (€ 2.28 billion) in <b>business capital turnover, warehouse capacity and staff reduction</b> . <b>Processing times</b> have decreased significantly: Export : 1 day → 1.5 hours Import: 2 days → 1.5 hours Refund: 2 days → 5.2 hours Payment: 4 hours → 10 minutes
<b>e-Procurement (KONEPS)</b>	<b>Improved processes and simplified procedures</b> brought annual savings of KRW 8 trillion (€4.8 billion). These are split between KRW 1.4 trillion in public sector and KRW 6.6 trillion in private sector savings (travel costs of suppliers to government offices, paper administration, and postage).
<b>Online Patents</b>	All patents are now <b>published online</b> - no longer via a print journal. Savings in paper administration and postage were estimated at KRW 231.6 billion (€139 million) by 2006. KRW 66 billion (€39.6 million) are saved in application costs for citizens (travel, postage, document production). <b>Patent examination periods</b> have also decreased from 21 months (2004) to 16.8 months (2011).
<b>e-people citizen government</b>	Citizen-government interactions including <b>public hearings are digitalized reducing travel times and public infrastructure costs</b> . Ministries can also consult a more varied

Service	Example of savings
<b>interaction portal</b>	sample of citizens and reach remote areas more easily.

Source : Ministry of Security and Public Administration (2012) 'e-Government of Korea – Best Practices'.

The following graphic illustrates the X-road system that is used in Estonia for government data collection, storage and transfer of administrative documents, administrative services such as residency or car registration, e-tax payments, access of education certificates etc.

**Figure 3: An illustration of X-Road: Estonian Information System**



Note: the diagram is illustrative and does not include all elements of X-Road

Source: London Economics, based on Cybernetica (2013). X-Road eGovernment interoperability framework [http://cyber.ee/uploads/2013/03/cyber\\_xroad\\_NEW2\\_A4\\_web.pdf](http://cyber.ee/uploads/2013/03/cyber_xroad_NEW2_A4_web.pdf), [accessed 25 September 2015].

The forthcoming **EU e-Government Action Plan for 2016 – 2020** is the ideal policy vehicle for taking this forward. We propose that measures in the e-Government Action Plan for 2016 – 2020 should include:

- the **development of a firm proposal** for a pan-EU interoperability layer and unified e-authentication system to enable cross-border e-Government services, based on the lessons learned from e-Delivery and from experiences in the Member States;
- the **publication of an assessment** of the potential cost and time savings for citizens, business and administrations from the proposal, as well as the development costs and risks, based on the lessons learned from the Large Scale Pilots and e-Delivery and from experiences in the Member States;

- the **development of a common EU standard** for digital signatures for use in e-Government services and measures to reduce barriers to their use, drawing on experiences in Estonia and elsewhere;
- the **presentation of a proposal** for the Single Digital Gateway that integrates with existing Single Market Government tools, such as SOLVIT and Your Europe, and with the proposed pan-EU interoperability layer for cross-border e-Government services.

In addition to the above mentioned cost savings for administrative services, citizens and businesses, a particularly large impact from interoperable e-government services is to be expected with respect to **labour mobility**. Improving the recognition of professional degrees as well as facilitating access to and conversion of social security abroad is crucial for workers to move across borders.

The reduction of barriers to the European labour market is especially important due to the ongoing demographic change which will increasingly trigger labour shortages especially in the market for skilled workers. Currently low level of labour mobility are also due to policy-induced barriers such as the risk of losing pension entitlements, difficulties in **recognition of qualifications** etc.<sup>5</sup> Facilitating the exchange of administrative documents and the diffusion of information might importantly reduce processing times, and increase accessibility of the integrated labour market.

Some existing e-government tools, such as SOLVIT already address these challenges. Their main challenge is their visibility. Target audiences are currently too unlikely to discover the appropriate assistance. While search engine optimization might be a way forward to increase visibility, in the long run many of these tools should become redundant. A more ambitious approach could involve the transformation of the existing e-government platforms into an **integrated mechanism** to reduce business costs and market barriers by proactively using the information they generate for **strategic programming** and responding to issues as they arise (and are notified by the users of the tools in question). More ambitious still would be the use of ICT tools as parts of a **compliance-based regulatory approach**. This would seem to involve almost a reversal of roles, where administrations, rather than reacting to complaints/issues raised by businesses, use these channels to flag behaviour that is incompatible with the Single Market and communicate this to businesses.

With free information exchange across borders between citizens and administrations, issues with authentication and problems with document recognition should belong to the past. To achieve such a state, it is crucial **to harmonise privacy laws of the Single Digital Market** such that administrations from various countries may collaborate more effectively.

Until then, it is important to **train staff in national administrations** for effective cooperation between services, to create awareness of assistance tools, as well as clearly define their respective responsibilities in order to minimize duplication.

### **Engaging with citizens and businesses for feedback and knowledge discovery**

The purpose of the consultation process is to discover knowledge and insights dispersed among stakeholders and make them available to the policy-making processes of the European Union. As such, **what matters is that all relevant information is captured**. Whether the information fed into the consultation process is representative of the views and opinions of the stakeholder population (which can vary on a case-by-case basis

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<sup>5</sup> OECD, 2012. 'Mobility and migration in Europe', OECD Economic Surveys: European Union 2012.

depending on the scope of the policy in question) is of secondary interest at most, as long as the conditions exist for **all interested parties** to participate in the consultation.

**The openness of the consultation process is a key requirement:** this includes ensuring that open and public debate takes place in preparation of the policy initiatives that are subject to consultation (saliency); giving participants sufficient notice and time to consider and formulate responses; lowering the cost of participation (by using high-visibility, low-threshold, easy-to-use interfaces); and making consultations accessible (well-drafted consultation text available in all relevant linguistic versions).

So as not to pre-empt the revelation of unanticipated views and contributions, an open response format is desirable. The usefulness of restrictive survey formats in the consultation process should be reconsidered.

**The consultation process is thus distinct from a polling approach** that tries to capture the weight of different positions held by the population (of affected businesses and citizens) more generally. While analysis of consultation responses to discover more about the views expressed (e.g. whether they reflect only a small part of the affected stakeholders) may be useful (e.g. to determine the optimal dissemination approach), achieving proportionate representation of stakeholder views is not the aim of the consultation process per se.

#### Other feedback mechanisms

Making the views and opinions of European citizens count in European policy-making is the *raison d'être* of the European Parliament. The **MEPs' accountability** to their own constituencies is the fundamental channel through which citizen's preferences are fed into the policy-making process.

**Survey research and opinion polling** has an important role in gauging, on an ad hoc or periodic basis, public views and opinions on policy matters. The Public Opinion Analysis sector of the European Commission conducts the Eurobarometer surveys since 1973, monitoring the evolution of public opinion in the Member States, thus helping the preparation of texts, decision-making and the evaluation of the work of the EU institutions<sup>6</sup>. Such surveys remain a crucial feedback tool for policy-makers. However, their purpose should not be confused with that of the consultation process (see above).

Studies commissioned by the European institutions that contain insights from stakeholder consultations should be viewed as an important additional source of insights relevant to policymaking.

While not their primary purpose, SOLVIT, Your Europe Advice, and Enterprise Europe Network can all be used to generate insights into the barriers and costs businesses and citizens encounter in the Single Market. A centralised **analytic function** that can query the data generated by these platforms and integrates them into policy cycle needs to be created. Attention should be paid to methodological developments in the field of survey research (multi-level modelling/post-stratification), by which population-level insights can be extracted from **non-representative samples**<sup>7</sup>.

#### Summary & high-level recommendations

Elimination of barriers and costs increases economic efficiency and the welfare of European citizens.

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<sup>6</sup> [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm) [accessed 28 September 2015].

<sup>7</sup> For an example of the state of the art see Wang et al. (2015).

Outcome-focused legislation/regulation should be pursued in accordance with the **Smart Regulation** approach. This requires clear prioritisation of policy actions and enhanced use of information tools.

Ubiquitous ICT solutions are an integral part of this approach. Best practice should be sought and emulated. **Examples of best practice can be found in Estonia and South Korea**, for example.

ICT-enabled minimisation of compliance costs (with **zero compliance costs for SMEs** as the ideal) should include burden-shifting to the relevant administrations, which can leverage economies of scale and ensure compliance is achieved efficiently.

**EU-level solutions are imperative** to ensure that national level ICT solutions do not create new barriers and costs business trading across the EU.

The **monitoring of barriers and costs is piecemeal and unsystematic**, quantification and clear identification of barriers and costs is lacking, which makes prioritisation of policy actions difficult.

Our high level recommendations for legislative and non-legislative actions to address these issues are set out below, starting with the need to provide policy-makers with better information on costs and benefits.

**Table 5: High-level recommendations**

No.	Recommendation
1.	Existing Single Market strategies should be amended to include <b>concrete actions and timetables for all initiatives</b> . The timetables should be explicitly linked to impact and cost/barrier assessments and provide a quantification of the cost of slippage (the cost of slow Europe). Actions (such as reviews, analyses, etc.) that do not directly lead to regulatory outcomes should be linked to concrete and timetabled actions.
2.	Development of an <b>Action Plan to identify e-Government services that would benefit from coordination at the EU level</b> . For each candidate service, the costs and benefits of coordination at the EU level should be assessed using an approach consistent with the approaches set out in the Smart Single Market Regulation report.
3.	Further development of the ideas and mechanisms tested in the Large Scale Pilots that are integrated in the <b>e-SENS</b> project is required in order to lead to <b>concrete actions</b> for those services that are assessed as benefitting from coordination at the EU level. We propose that measures in the e-Government Action Plan for 2016 – 2020 should include: <ol style="list-style-type: none"> <li data-bbox="328 1704 1433 1839">a. the <b>development of a firm proposal</b> for a pan-EU interoperability layer and unified e-authentication system to enable cross-border e-Government services, based on the lessons learned from e-Delivery and from experiences in the Member States;</li> <li data-bbox="328 1861 1433 1995">b. the <b>publication of an assessment</b> of the potential cost and time savings for citizens, business and administrations from the proposal, as well as the development costs and risks, based on the lessons learned from the Large Scale Pilots and e-Delivery and from experiences in the Member States;</li> </ol>

No.	Recommendation
	<ul style="list-style-type: none"> <li>c. the <b>development of a common EU standard</b> for digital signatures for use in e-Government services and measures to reduce barriers to their use, drawing on experiences in Estonia and elsewhere;</li> <li>d. the <b>presentation of a proposal</b> for the Single Digital Gateway that integrates with existing Single Market Government tools, such as SOLVIT and Your Europe, and with the proposed pan-EU interoperability layer for cross-border e-Government services.</li> </ul>
4.	<p>Development of an <b>Action Plan to identify services at the EU level where compliance costs for SMEs could be minimised through the use of automated compliance systems (Zero Compliance Costs for SMEs Action Plan)</b>. For each candidate service, the costs and benefits of such an approach should be assessed using an approach consistent with the approaches set out in the Smart Single Market Regulation report. The current initiatives for <b>VAT reform</b> and <b>customs reform</b> are promising testbeds for such an approach.</p> <ul style="list-style-type: none"> <li>a. Implementation of the supporting IT infrastructure for the Union Customs Code has been delayed until the end of 2020, at a cost of €260bn. The scope for an <b>integrated European customs IT system</b> should be assessed carefully. Such a system, with automated data input based upon administrative data from businesses, may change customs compliance into ex ante system, reduce or largely eliminate the level of human errors or mistakes, reduce costs borne and barriers experienced by businesses, in particular SMEs and lead to a customs sanction system which does not focus on infringements without intent.</li> <li>b. A similar approach could be feasible as part of a <b>common VAT system</b> with harmonization of tax rates and filing of taxes across the EU member states. Such harmonization and simplification is likely to enhance tax incomes by closing the tax gap, while yielding large savings in compliance costs for businesses.</li> </ul>
5.	<p>In order to take urgent action against <b>consumer discrimination in cross-border e-commerce</b>:</p> <ul style="list-style-type: none"> <li>a. publication of the planned legislative proposals on prohibiting <b>geo-blocking</b> should be ensured before 30 June 2016; and</li> <li>b. legislative proposals to <b>improve enforcement</b> of existing consumer legislation should also be published before 30 June 2016. These proposed changes to Regulation on Consumer Protection Cooperation should, in addition to improving <b>monitoring and cooperation mechanisms</b>, propose any measures that could improve the level of compliance, considering a range of potential options such as <b>information dissemination</b> and <b>penalties for non-compliance</b>.</li> </ul>
6.	<p>The <b>cost of slow Europe should be given greater visibility</b> to remind policymakers of the cost of delayed action in areas that have already been identified as policy priorities. The cost of slow Europe which arises from the delay between initiatives and ultimate impact on the market is very large. If the cost of non-</p>

No.	Recommendation
	<p>Europe estimates are accurate, the <b>urgency with which action needs to be pursued</b> is absolute.</p>
7.	<p>Initiatives such as the '<b>10 most burdensome EU laws for SMEs</b>' and the assessment by the '<b>High Level Group on Administrative Burdens</b>' should be <b>permanent, methodologically sound and integrated with other information tools</b> in order to provide policymakers with the information necessary to prioritise and tailor actions to complete the Single Market.</p>
8.	<p>A coherent and comprehensive <b>system for collecting and collating information</b> on the costs and barriers to the Single Market needs to be developed and implemented. In order to achieve this, existing <b>information tools</b>, such as SOLVIT, Your Europe Advice, and Enterprise Europe Network should be redefined and linked with other existing tools that collect information about barriers and costs. These include: internal market scoreboards and indicators, petitions, infringement proceedings, compliance data and cases before national courts. A dedicated and frequently updated report on the state of play and progress on the Single Market should be published, based on the information produced by the recommended information system. A study should be undertaken that reflects on how this information system should be structured and that reviews which barriers and costs are overlooked by existing information tools.</p>
9.	<p>The Single Market is a key policy for the European Union, with the potential for significant further benefits to be achieved from further removal of costs and barriers. Current European institutional structures do not appear to fully reflect this and we propose that they be reinforced and realigned, recognising the important role that can be played by the European Parliament, and in particular the <b>IMCO Committee</b>.</p> <p>Elimination of barriers and costs should become a central focus of better regulation and should be taken into account comprehensively across the policy cycle, including in strategic programming (Commission strategies, Council Conclusions, EP resolutions, etc.), legislative and non-legislative actions, REFIT and ex ante and ex post impact assessment. This could be achieved by:</p> <ol style="list-style-type: none"> <li>a. integrating an improved barriers and costs test into the SME test, and using this <b>revised SME test</b> comprehensively and systematically across all European legislation. Similar tests at the level of the Member State could also be beneficial to SMEs; better regulation standards and access to data could be coordinated on the European and national levels.</li> <li>b. building a centralised <b>analytic function</b> that can query the data generated by the information system proposed in Recommendation 8 and integrates them into the smart regulation policy cycle in order to identify more effectively and efficiently remaining market and regulatory barriers and unnecessary costs;</li> <li>c. choosing appropriate legislative instruments, taking into account the full range of implications of that choice, in line with the smart single</li> </ol>

No.	Recommendation
	<p>market regulation framework. This should include consideration of likely implementation timeframes and effectiveness, taking account of the costs of slow Europe. This may, for example, lead to the more frequent use of such legal instruments as regulations rather than directives, since the latter may lead to slow and incomplete implementation.</p> <p>National legislatures, administrations and courts have an important role in guaranteeing that the elimination of market barriers and regulatory barriers raised by national regulations happens expediently and uses the most effective regulatory instruments. A Zero Compliance Costs for SMEs Action Plan could further increase the role of national authorities in this process.</p>
<p><b>10.</b></p>	<p>The current consultation framework, in combination with existing online feedback mechanisms and other information tools, should be developed into a <b>Persistent Regulatory Evolution and Enforcement Tool</b>, an ongoing information collection and consultation platform set up to collect and aggregate information and make it available for use in enforcement or the continuing legislative reform process.</p>

**Source:** London Economics

## 1. BACKGROUND & CONTEXT

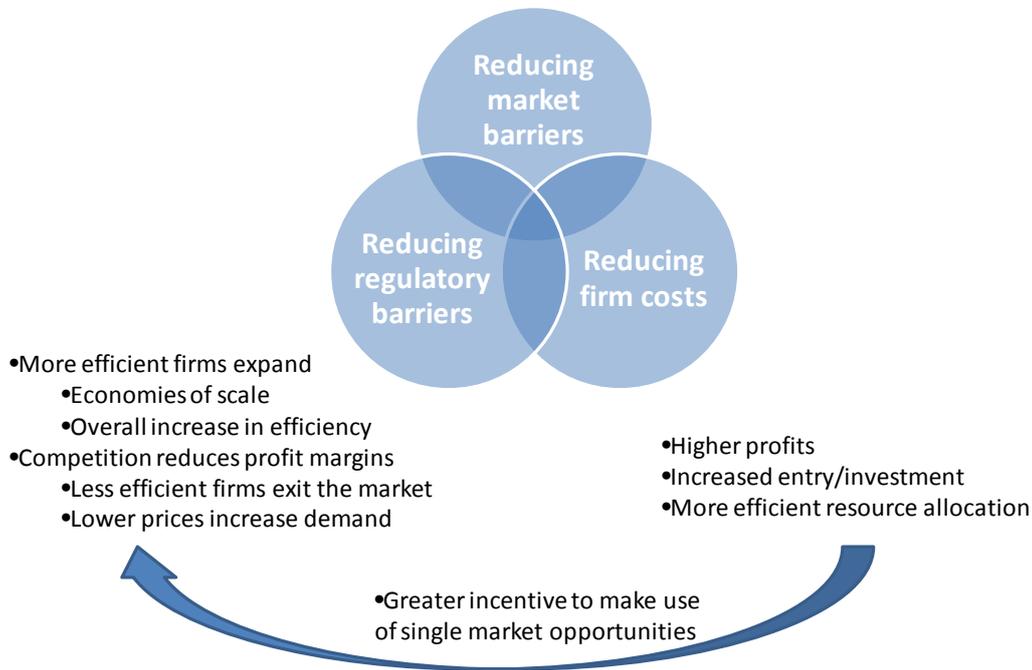
### Summary

1. Reducing the costs of market barriers for economic operators increases aggregate welfare by enabling Europe-wide competition and economic efficiency.
2. Smart Regulation requires policies to be evaluated on the basis of costs and benefits, and efforts to be targeted strategically at those areas where the highest benefits can be expected.
3. Barriers are costs which must be borne by a firm that seeks to enter a market which are not borne by firms already in the market. Barriers can be created by features of the market (information asymmetries, economies of scale, consumer preferences and frictions associated with differences in language and custom) or by governments (regulatory and legislative barriers).
4. Market barriers include information asymmetries and economies of scale (giving an advantage to incumbents in large countries) as well as consumer preferences and frictions associated with differences in language and custom. Of particular concern are market barriers caused by illicit behaviour such as the consequences of market power (anticompetitive agreements, abuse of a dominant position, unfair trading practices), which are exacerbated by market fragmentation.
5. Well-designed regulations lower barriers and may be necessary in the presence of market failures.
6. However, regulation can interfere with the efficiency of the market (raising market barriers and imposing unnecessary costs on business). National-level regulation in response to market failures can inadvertently create new barriers through legal fragmentation of the Single Market.
7. EU-level regulation can address regulatory failure at the national level, but must be delivered efficiently, i.e. without imposing unnecessary compliance costs on businesses. A by-product of ineffective regulation is the cost of non-compliance with regulation (shadow economy).
8. National and EU-level regulation failure may arise from regulator capture, agency problems, outdated regulation, unclear priorities and lack of impact analysis and consideration of synergies.
9. The dividing line between necessary and unnecessary compliance costs is constantly shifting. **Developments in the area of ICT and data analytics in particular have the potential to reduce strictly necessary costs** to a minimum (in many cases likely to be at zero).

### 1.1. Reducing costs and barriers to the Single Market as a policy objective

Removing barriers and lowering costs increases aggregate welfare ultimately through increased economy-wide productivity and innovation<sup>8</sup>. The aggregate welfare effect is caused by the presence of economies of scale that are available to firms that operate outside their own country and the increase in competition that is engendered by European firms' ability to operate across borders. As a result, the completion of the Single Market benefits some businesses, namely the most competitive and innovative ones, but all consumers through lower prices and increased choice.

**Figure 4: The effects of Single Market policies**



**Source:** LE Europe.

Increased competition is created by making it easier for firms to trade across borders (more precisely, for goods and services as well as firms to move across borders). Together with the free movement of labour and capital, a number of effects arise:

Firms become bigger, by organic expansion in line with increased production or by cross-border M&A activity. Larger firms can take advantage of economies of scale (and spread the fixed cost of production across a larger volume of output) and create more sophisticated supply chains (with suppliers benefiting themselves from the same processes). This process is led by the most productive firms<sup>9</sup>. Competition is stimulated, with lower prices (closer to the marginal cost of production) putting pressure on the least productive firms, which will eventually exit the market.

A final effect of competition is the effect on innovation: Competition can stimulate innovation through the so-called "escape-competition effect": more competition induces firms that face stiff competition from similar firms (sectors where incumbent firms are operating at similar technological levels) to innovate in order to 'escape' competition. This

<sup>8</sup> See the detailed exposition in Mariniello et al. (2015).

<sup>9</sup> See Melitz (2003).

is because more intense product market competition increases the incremental value of getting ahead of the competition in technology terms<sup>10</sup>.

In the labour market, increased mobility reduces regional skills shortages and overall skills mismatch. Moreover, labour costs are subject to increased labour market competition, leading to increases in productive efficiency. Similarly, the free flow of capital in the Single Market allows for a more efficient allocation of capital (to the most productive firms).

## 1.2. The relationship between barriers and costs

Following the definition of barriers to entry in the competition economics literature<sup>11</sup>, we conceptualise a barrier as a cost which must be borne by a firm which seeks to enter a market, and which is not borne by firms already in the market. More succinctly, any obstacle to doing business is a barrier, and costs are the financial consequence of overcoming it. The costs of overcoming an obstacle include the costs of compliance with regulation; the cost of lost opportunities if obstacles cannot be overcome; and the cost of non-compliance in cases where obstacles are circumvented by illicit means (including costs to consumers and costs to society of the business functioning in the shadow economy). Barriers affect businesses. The costs caused by barriers affect businesses as well as consumers, administration and taxpayers.

### 1.2.1. Barriers

Barriers can be created by governments (regulatory and legislative barriers) or by features of the market itself.

#### a. Market barriers

Examples of market barriers are information asymmetries and economies of scale (giving an advantage to incumbents in large countries) as well as consumer preferences and frictions associated with differences in language and custom.

Market power, while not in itself a barrier, can give rise to market barriers in the form of unfair trade practices (UTPs). UTPs “are practices imposed by a stronger party in a contractual relationship that grossly deviate from good commercial conduct and are contrary to good faith and fair dealing. UTPs are present at a national level, but they can also exert a negative impact on developing trade among Member States, which in turn may hinder the development of the internal market.”<sup>12</sup>

Empirical evidence suggests that “the most important trade barriers are transportation costs and policy factors such as Technical Barriers to Trade. Trade integration is generally lower for countries that opted out of the Euro or did not abolish border controls in accordance with the Schengen Agreement”<sup>13</sup>.

#### b. Regulatory barriers

Regulation has an ambiguous role. While regulations can interfere with the efficiency of the market (raising market barriers and imposing unnecessary costs on business), well designed regulations not only make markets more efficient but also help ensure that market outcomes are more equitable<sup>14</sup>. In fact, regulation can be necessary in the presence of market failures, such as unstable, missing and incomplete markets (which cannot ensure adequate supply), markets that produce negative externalities (where property rights are

<sup>10</sup> See Aghion et al. (2005).

<sup>11</sup> Fee et al. (2004).

<sup>12</sup> [http://www.europarl.europa.eu/thinktank/de/document.html?reference=IPOL\\_STU%282015%29563438](http://www.europarl.europa.eu/thinktank/de/document.html?reference=IPOL_STU%282015%29563438)

<sup>13</sup> Chen and Novy (2009).

<sup>14</sup> Stiglitz (2008).

incomplete or lacking, and markets being exploited by economic operators with sufficient market power.

Regulatory barriers thus require a careful consideration of costs and benefits. It is likely that at least some regulatory barriers represent a trade-off, addressing market failures, while at the same time imposing additional costs on economic operators, thereby themselves raising up new barriers. In these situations, the efficiency of the regulatory approach is the paramount consideration.

In this respect, the promise of new, efficient regulatory approaches enabled by ICT acquires additional relevance. The emergence of technology-enabled, radically improved instruments to lower information and transaction costs represents an opportunity to increase the occurrence of win-win situations (lower costs and lower market barriers).

Attempts to deal with market failure on a national level can cause regulatory failure by raising up new barriers to trade between Member States. EU-level regulation has a special role in this context, as it is the only mechanism by which market fragmentation caused by divergent national regulation can be addressed.

However, while the existence of barriers can impede the completion of the Single Market, some barriers are the legitimate expression of differences in national preferences. The EU's objective in this area is the minimisation of "costly 'regulatory heterogeneity' arising from decentralized decision-making without being rooted in genuine differences in preferences"<sup>15</sup>.

### 1.2.2. Costs

Transaction costs are the economic equivalent of frictions in a mechanical system<sup>16</sup>. Firms engaging in trade of goods and services incur a variety of costs in the process.

The establishment of the Single Market "is associated with a reduction (and eventually abolition) of tariff and non-tariff barriers to trade. The reduction in costs for businesses comes through reduced border formalities, harmonisation of standards and increased market transparency. This reduces transaction costs and, mechanically engenders a net welfare gain."<sup>17</sup>

Figure 5 illustrates how the 'transaction cost box'<sup>18</sup> is formed by costs along three dimensions:

- legal and regulatory frameworks;
- macroeconomic factors; and
- market fragmentation.

European policies can affect all three dimensions of transaction costs. Actions that reduce the cost of doing business for a company active in the EU can have indirect but potentially very substantial benefits for the Single Market. This is because higher profits encourage market entry (which in turn increases competition, see Figure 4 above), enable increased investment and lead to a more efficient allocation of firms' resources (increasing overall competitiveness of the European economy). Crucially, the benefits from lower costs are typically scalable, which means that they benefit companies that don't limit their activities to the national scale and encourage expansion.

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<sup>15</sup> Pelkmans (2012).

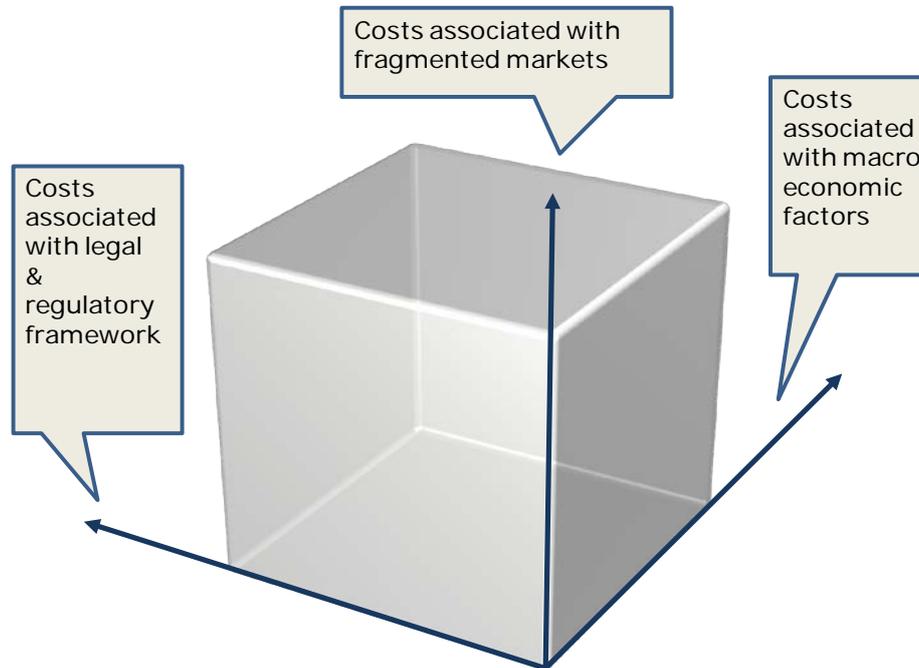
<sup>16</sup> Williamson (1981).

<sup>17</sup> Marieniello et al. (2015).

<sup>18</sup> McDonald and Dearden (1992)

However, the cost dimensions are interrelated, so that a reduction in one dimension can lead to an increase in another. It is important for policy makers to remember that what matters to businesses is the total size of the 'cost box', not each dimension in isolation.

**Figure 5: Transaction costs and the Single Market**



**Source:** Adapted from McDonald and Dearden (1992), Exhibit 1.1, p. 44.

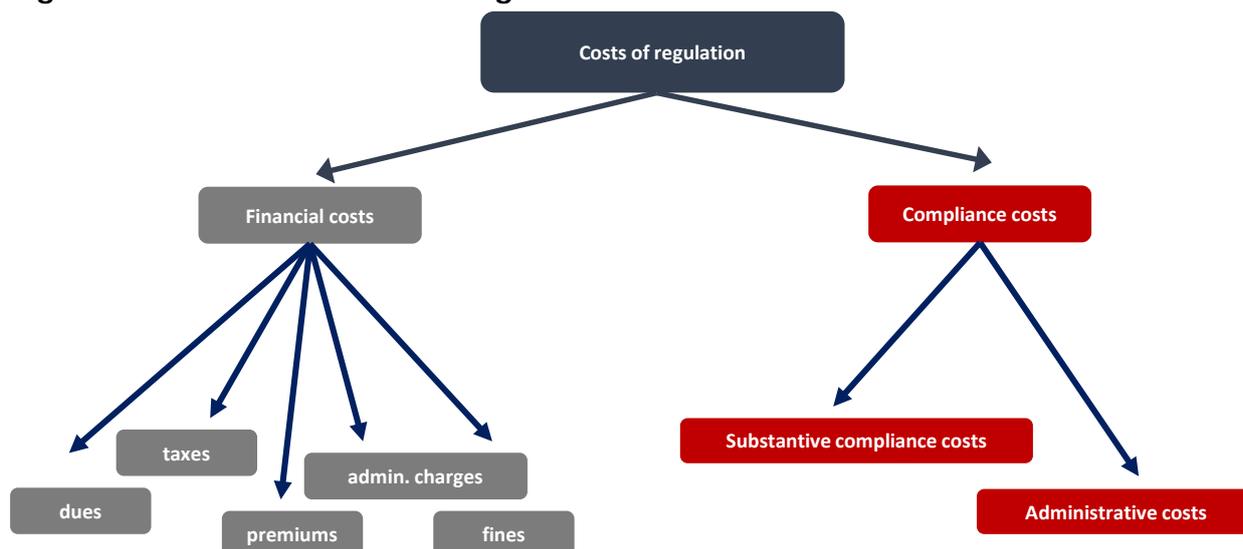
#### **a. Legal and regulatory costs**

Firms incur a variety of costs as a result of legislation and regulations. Financial costs are licence fees, service charges etc., while compliance costs are all other costs to businesses from complying with regulations. Compliance costs can be further divided into 'substantive compliance costs' and 'administrative burdens'.

A distinction needs to be made between necessary costs (including the time and effort spent by businesses on compliance) and unnecessary burdens (requirements that are not functional in the sense that there would be a lower cost way to achieve the desired outcome). With regard to the latter category, it must be noted that the dividing line between necessary and unnecessary compliance costs is constantly shifting. Developments in the area of ICT and data analytics in particular have the potential to reduce strictly necessary costs to a minimum (in many cases likely to be at zero).

However, even necessary costs can have negative impacts, for example if they divert attention and resources away from activities that increase productivity and innovation. The trade-off between dynamic efficiency (an optimal level of innovation) and the (static) objectives of is complex, often case-specific, and uncertain and represents one of the key challenges for regulatory policy.

Examples of the costs that are imposed on business are the "top 10 most burdensome EU laws for small and medium-sized enterprises" identified through a consultation exercise under the Regulatory Fitness and Performance Programme (REFIT) launched in December 2012.

**Figure 6: Cost of rules and regulations**

**Source:** Netherlands Bureau for Economic Policy Analysis (2004). 'Reducing the administrative burden in the European Union'. Available at: <http://www.administrative-burdens.com/default.asp?page=239> [accessed 03 September 2015]

However, as pointed out in the previous section, it is important to remember that government interventions that are costly for businesses may at the same time be beneficial from a market perspective. For example, the enforcement of standards and reporting obligations on businesses increase market transparency, which has a positive effect on competition and consumer welfare. Harmonisation of divergent national regulations in particular have a beneficial effect on the Single Market, unless differences arise from substantially different national circumstance, in which case a trade-off might be present.

### b. Market fragmentation

Establishing contracts with suppliers and buyers, hiring workers and marketing and selling to customers all entail costs, as does the need to conform to the laws, regulations (and norms and customs) prevailing in different member states. The existence of differences between member states is thus in itself a source of transaction costs, independent of the level of the regulatory burden in any given member state.

The definition used here is expansive and includes all forms of administrative and operating costs (e.g. duplication of administrative requirements, cross-jurisdictional due diligence, translation costs, etc.) as well as direct legal barriers and legal uncertainty.

In the limit, the cost faced by a firm wishing to operate in another member state approaches the cost of establishing a new company de novo in that member state (i.e., a legal barrier that completely prevents a firm from offering its services in another member states can be reduced to the cost of establishing a new company from scratch).

Some efforts to reduce the regulatory burden on companies (such as national eGovernment initiatives) can increase market fragmentation for firms trading across different member states. EU-level attempts to harmonise national regulation are a key instrument for reducing market fragmentation.

### c. Macroeconomic costs

Macroeconomic costs relate mainly to exchange rate risk<sup>19</sup> and the cost of currency exchange (for countries outside the Euro zone), as well as the need to adjust strategies to fit different macroeconomic conditions prevailing in different member states.

#### 1.3. Smart Regulation to reduce costs and barriers to the Single Market

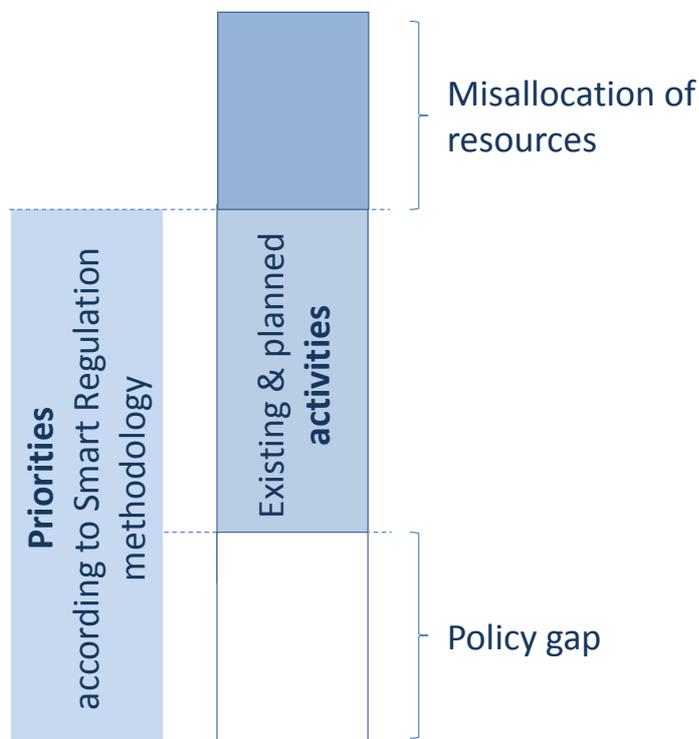
In the light of the persistence of barriers to a fully integrated Single Market, efficiency demands that the European legislative process prioritise barriers that:

- are especially harmful to the European economy; and
- can be addressed at the European level.

A further consideration is the trade-off between the ease with which a barrier can be addressed and the need for action in cases where the barriers are difficult to address, but where their removal would yield very high benefits. “Low hanging fruit”, in other words, should be harvested only to the point where the benefit is not exceeded by the (discounted) benefit of longer term measures that are more difficult to enact.

The key objective of the study is to identify the remaining barriers and costs experienced by businesses and suppliers in the Single Market and their adverse consequences, and to establish policy priorities and the tools to address them.

**Figure 7: Smart vs. existing regulation**



With regards to the tools, the objective is to investigate both the current initiatives and provide an assessment of their efficacy; and explore which further options may exist to reduce the barriers, especially in terms of digital solutions, some of which are being pioneered within the EU and at the national level both within Europe and internationally.

Smart regulation requires policies to be evaluated on the basis of costs and benefits, and to target efforts strategically at those areas where the highest benefits can be expected.

In the light of the potentially disruptive role of ICT-enabled solutions to the problem of regulatory failure and the fact that

regulation, even where it is strictly necessary, can by itself impose costs and raise up additional barriers to the Single Market, special attention is paid in this study to the role of Digital Single Market (covering e-commerce and e-government) in a new wave of regulatory reform aimed at reducing barriers and costs to businesses.

<sup>19</sup> Leigh et al. (2015) present new research “suggesting that (...) there is little sign of a disconnect in the relationship between exchange rates and exports and imports; exchange rates still matter for trade. The findings indicate that 10% real effective exchange rate depreciation implies, on average, a 1.5% of GDP increase in real net exports.

A final objective is to look at the use of consultations in the EU's legislative process. Specifically, the task is to examine whether the approach currently used for consulting stakeholders is fit for purpose, and to consider modifications that would increase the usefulness and impact of public consultations on legislative outcomes.

As such, the study feeds into the "performance-based policy cycle" as a feedback mechanism that draws lessons learned in the later phases of the policy cycle through the assessment of existing initiatives to inform policy-making. Together with other Single Market tools, it provides information about the issues hindering a successful implementation of the different Single Market areas. This information can in turn be used to inform new policy priorities and adjustments to existing programmes and policies. Conversely, policy adjustments might be able to address those factors that impair the effectiveness of the assistance tools.<sup>20</sup>

The approach adopted for this research is primarily a synthesis of existing information and analysis of existing quantitative evidence (studies, impact assessments). Stakeholders' feedback was received on the issue of the consultation process (Section 5).

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<sup>20</sup> LE (2015), p. 107.

## 2. BARRIERS & COSTS

### KEY FINDINGS

1. Reducing business costs and regulatory and market barriers is necessary to complete the Single Market. However, a trade-off may be involved as some costs are necessary to ensure the right regulation is in place to enable the Single Market.
2. The monitoring of barriers and costs is piecemeal and unsystematic, quantification and clear identification of barriers and costs is lacking, which makes prioritisation of policy actions difficult.
3. Existing evidence points to significant market barriers in the form of technical location restrictions and de facto discrimination based on country of residence; anticompetitive conduct and unfair trading practices, and a lack of access to information and redress mechanisms. Barriers to the Digital Single Market include frictions in cross-border payments and deliveries.
4. In terms of market barriers, technical restrictions on accessing content in other member states (geo-blocking) and consumer discrimination in cross border transactions warrant an urgent policy response.
5. Regulatory barriers exist on the level of the Member States and at the EU level. The reduction of national-level regulatory barriers should be coordinated at the EU level, so as to prevent divergent national responses to raise new barriers. Regulatory barriers at the EU level (inefficient/high-cost or ineffective legislation) should be addressed directly.
6. Compliance with national taxation and customs rules impose by far the greatest administrative burden on European businesses, estimated at €87bn by the High-level Group on Administrative Burdens in 2014.
7. The fragmentation of the Single Market due to different national legal frameworks continues to affect the markets for services and products, as well as narrower areas such as VAT and customs.
8. Missing e-government and a lack of coordination of e-government solutions at the European level, which can lead to market fragmentation is a key barrier to Single Market integration across sectors.
9. The body of research on the 'cost of non-Europe' together with more targeted research can be combined in an attempt to quantify the cumulative effect of barriers in the Single Market. A more precise measurement of the magnitude of existing barriers is not currently available to European policy makers.
10. The Digital Single Market, the Single Market for services, product market and sector regulation, and public procurement should receive priority attention owing to the size of benefits that can be expected if the Single Market in these areas were completed.

11. The Digital Single Market is held back by both regulatory and market barriers. Priority actions relate to the lowering of market barriers and transaction costs and the creation of enabling frameworks (e-government) to promote Europe-wide economic activity in the digital sector and the wider economy.

12. Exercises like the identification of the 'ten most burdensome regulations for SMEs' and the stocktaking of administrative burdens undertaken for the 'Cutting Red Tape in Europe' report should be performed on an ongoing basis, using a consistent methodology.

## 2.1. Barriers and costs, impacts, and policy response

Under the **Better Regulation Agenda**, the European Union is committed to "achieving policy goals in the most efficient way"<sup>21</sup>. This implies that policy measures:

- **focus** on the most serious sources of inefficiency and unnecessary burden;
- use **quantitative estimates** of the potential benefits and cost savings that accompany each measure.

The identification of barriers and their ordering in terms of impact and the extent to which they can be addressed through EU-level policy action therefore is a key element of EU policy at the strategic level.

### 2.1.1. The role of quantification

Barriers and business costs are inherently difficult to quantify. As detailed in Chapter 1.1 above, both barriers and costs have direct and indirect effects on businesses, competitiveness and market dynamism. While direct costs can be relatively easy to measure, knock-on effects of high costs in terms of market entry, the relevance of economies of scale, distorted competition between member states, etc., are much more difficult to put a figure on. Moreover, the barriers and costs can be difficult to disentangle (see Figure 4, p. 28). For example, regulatory interventions can raise business costs while at the same time reducing market barriers.

A common measure of the benefit of the Single Market is the so-called 'cost of non-Europe' that measures the gap between a fully realised Single Market and the current situation. This can be treated as an **indirect measure of barriers (regulatory and market barriers) and business costs**, as a complete Single Market implies

- the removal of all unnecessary barriers; and
- business costs at the minimum level compatible with the proper functioning of the Single Market (with zero compliance cost for SMEs as the ideal).

Quantification is needed for the purpose of this study to **prioritise across action areas** for European policy in terms of efficiency (efficient use of legislative and material resources). The cost of non-Europe serves as a proxy to identify areas where costs and/or barriers remain and which, consequently, deserve priority attention by policymakers. In this regard, it is important to recollect that measures to address barriers and costs can overlap, but can also involve trade-offs.

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<sup>21</sup> European Commission - "Fact Sheet Better Regulation Agenda: Questions & Answers" (2015). Available at: [http://europa.eu/rapid/press-release\\_MEMO-15-4989\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4989_en.htm) [accessed 01 November 2015].

### 2.1.2. Identifying barriers & costs

In order to calibrate the policy response it is necessary to identify barriers that:

- are caused by market failure and may require regulation to fix; or
- are caused by regulatory failure and require the removal or modification of regulation.

In each case, the potentially ambiguous effect of regulation needs to be taken into account. Regulation can both:

- raise up new barriers:
  - a) through increased market fragmentation caused by non-harmonised regulation;
  - b) through excessive compliance costs;
  - c) through inefficient regulation, e.g. prioritising short-term over longer term efficiency (innovation); and
- reduce barriers by addressing market failures in a smart and efficient (least-cost) way.

Costs, as the manifestation of barriers from the business perspective can be addressed directly (reducing compliance cost) or indirectly through addressing the various barriers, as above. The role of 'smart' regulation is therefore recursive and requires constant monitoring and adjustment.

Addressing barriers and costs may be accomplished by overarching measures that tackle both barriers and costs in some cases. In others, additional costs may need to be accepted to achieve greater net benefits from market integration. Given this trade-off, it is especially important that all policy measures make optimal use of ICT-enabled instruments to keep implementation costs at a minimum.

## 2.2. Market barriers

No comprehensive and systematic monitoring of market barriers is available to European policymakers. The following list of market barriers contains barriers that have recently received attention from European policymakers based on their assumed magnitude. However, quantification, where available is typically approximate and idiosyncratic (different metrics), which does not permit a clear ordering in terms of magnitude.

### 2.2.1. The Commission Report on 'Single Market integration and competitiveness in the EU and its Member States' (2015)

The Commission's 2015 Report on 'Single Market integration and competitiveness in the EU and its Member States' provides an assortment of barriers under the heading 'remaining barriers to integration in the Single Market' without providing analysis of priorities and impacts. The market barriers discussed in the report are:

- Insufficient demand;
- infrastructure-related barriers, for example
  - a) The lack of a harmonised charging network for electric cars
  - b) air traffic management (ATM) capacity, and
  - c) fuelling stations to guarantee supplies for LNG-powered ships<sup>22</sup>;

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<sup>22</sup> European Commission (2015), p. 90.

- fragmentation in the market for finance<sup>23</sup>; and
- skills mismatch between Member States<sup>24</sup>.

Further evidence on market barriers can be found in various sources, although the diverse nature of the evidence means that no comprehensive list or ranking can be compiled under the scope of this Study. Examples of market barriers that have recently received attention by policymakers are given below.

### 2.2.2. Fragmentation of the Digital Single Market: Discrimination & consumer trust

Consumers cannot currently participate in an undivided Digital Single Market. European providers account for around 42% of the digital market, but only 4% is contributed by EU cross-border services.<sup>25</sup> Moreover the Commission found that “in 52% of all attempts at cross-border orders the seller does not serve the country of the consumer”<sup>26</sup> and only “15% of consumers bought online from other EU countries in 2014, while 44% did so domestically”<sup>27</sup>.

Besides natural barriers such as language and the inherently limited geographic scope of some (location-based) services, phenomena such as geo-blocking, limited cross-border access to goods and services due to differences in intellectual property rights law<sup>28</sup>, price discrimination based on internet Protocol or payment card address data, lack of transparency about determinants of inter-EU price differentials (including differing rules on promotions and special offers), and uncertainty regarding consumer rights, dispute resolution and redress mechanisms represent serious barriers to market integration.

Much cross-border trade is inhibited due to consumer discrimination based on the country from which goods and services are ordered. As many as 61% of cross-border purchases could not be fulfilled in a mystery shopping evaluation in 2009.<sup>29</sup> The discrimination frequently happens during online sales and commonly takes the form of simple refusal to sell, automatic re-routing to a domestic provider, and providing adverse sales conditions due to foreign residency. The discrimination is often based on consumers’ IP-addresses.

While some price differentiation may still be justified by current market practice in parcel delivery where prices, especially to remote or less developed areas in other Member States, still exceed domestic prices<sup>30</sup>, such discrimination has no natural explanation in the provision of digital contents. Also, since the implementation of the Single Euro Payments Area (SEPA) in 2014, price discrimination in cross-border transactions due to payment methods should belong to the past.<sup>31</sup>

Providers of digital contents try to compartmentalise the Single Market on the basis of intellectual property rights. While the emission of geographically limited licenses is justifiable under national law, they do not hold under European law as they contradict consumers’ freedom in the DSM.<sup>32</sup>

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<sup>23</sup> Ibid, p. 94.

<sup>24</sup> Ibid, p. 91-92.

<sup>25</sup> Digital Single Market Factsheet <http://ec.europa.eu/digital-agenda/en/digital-single-market>

<sup>26</sup> Digital Single Market Factsheet <http://ec.europa.eu/digital-agenda/en/digital-single-market>

<sup>27</sup> Ibid.

<sup>28</sup> European Parliament (2013) Study on the Discrimination of Consumers in the Digital Single Market.

<sup>29</sup> European Parliament (2013) Study on the Discrimination of Consumers in the Digital Single Market, based on Mystery shopping evaluation (2009), p. 39 ff.

<sup>30</sup> See remaining barriers in parcel delivery services in Section **Error! Reference source not found..**

<sup>31</sup> [http://ec.europa.eu/finance/payments/sepa/index\\_de.htm](http://ec.europa.eu/finance/payments/sepa/index_de.htm) and PWC (2014) ‘Economic analysis of SEPA Benefits and opportunities ready to be unlocked by stakeholders’

<sup>32</sup> European Parliament (2013) Study on the Discrimination of Consumers in the Digital Single Market, p. 77 ff.

The current EU legislation does not seem to sufficiently address problems of consumer discrimination. The Services Directive<sup>33</sup> has taken important steps towards a further integration of the Single Market. But evaluations following the directive's full transpositions in 2009 confirmed remaining barriers due to insufficient levels of transposition and issues relating to access restrictions, legal forms, and insurance obligations.<sup>34</sup>

Amendments to the directive are likely in the upcoming years. In the meantime, initiatives such as the Common European Sales Law and recent ADR/ODR legislation are trying to reduce remaining barriers.

Trust in online transactions continues to be low for many European consumers, which is amplified in the case of cross-border exchanges. The lack of a transparent data protection and privacy framework is problematic.

The Digital Single Market suffers from fragmentation as a result of consumer and business attitudes towards electronic transactions involving other Member States. 70% of Europeans in 2011 were concerned that their data may be misused for different purposes than for what they were initially collected for. The same figure from 2015 is equally high.<sup>35</sup>

On average 13% of Europeans do not access online services in another Member State because of a lack of trust. The proportion ranges from 1% in Estonia and Malta to 27% in Belgium.

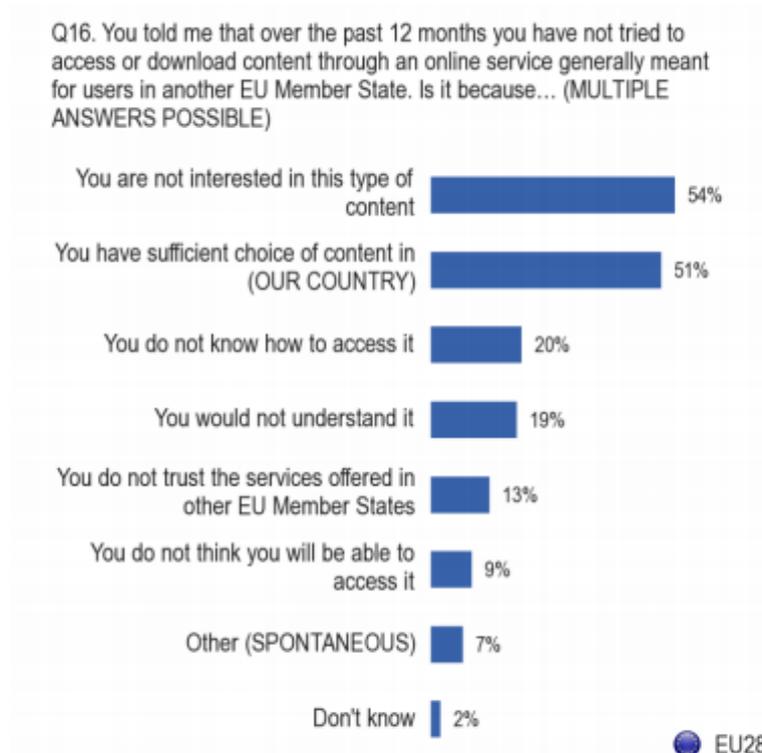
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<sup>33</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0123&from=EN>, [accessed 2 February 2016].

<sup>34</sup> See for example: [http://ec.europa.eu/growth/single-market/services/services-directive/implementation/index\\_en.htm](http://ec.europa.eu/growth/single-market/services/services-directive/implementation/index_en.htm) and [http://ec.europa.eu/growth/single-market/services/services-directive/implementation/evaluation/index\\_en.htm](http://ec.europa.eu/growth/single-market/services/services-directive/implementation/evaluation/index_en.htm), [accessed 2 February 2016].

<sup>35</sup> Eurobarometer on Data Protection, 2011 and 2015. [http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet\\_data\\_protection\\_eurobarometer\\_240615\\_en.pdf](http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_eurobarometer_240615_en.pdf); [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_359\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_359_en.pdf); [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_431\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_431_sum_en.pdf) [All accessed 11 September 2015]

**Figure 8: Consumer trust in cross-border e-commerce transactions**



*Base: respondents who have not tried to use an online service generally meant for users in another EU Member State (N=19,303, 73% of all respondents)*

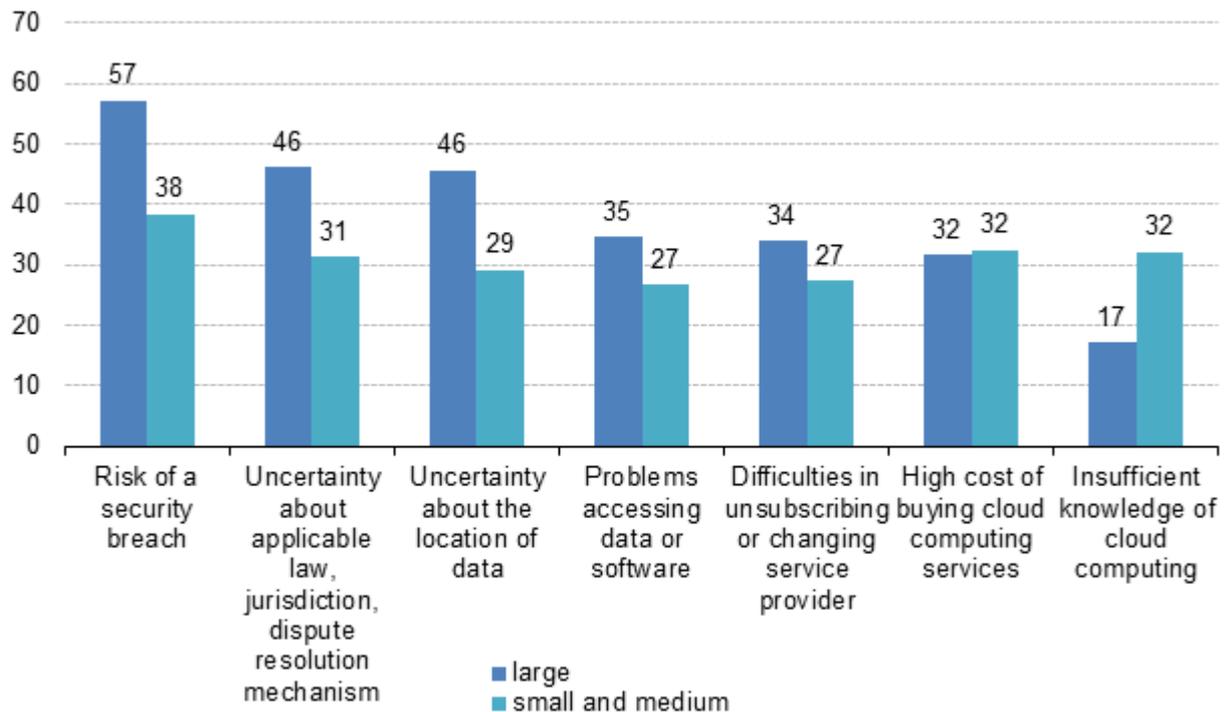
**Source:** Flash Eurobarometer 411: Cross-border access to online content

This is despite the fact that “EU consumers could save €11.7 billion each year if they could choose from a full range of EU goods and services when shopping online”<sup>36</sup>.

Similarly, significant proportions of enterprises are reluctant to use cloud services because of uncertainty regarding applicable laws.

<sup>36</sup> Digital Single Market Factsheet <http://ec.europa.eu/digital-agenda/en/digital-single-market>

**Figure 9: Factors limiting enterprises from using cloud computing services, by size class, EU-28, 2014 (% enterprises using the cloud)**



Source: Eurostat

The lack of an e-Trust framework and transparent data protection and privacy rules are priority issues for European policy in this area. The abolition of roaming charges in the EU is in progress, although potential effects on competition and investment in the telecoms market need to be watched (an abolition of roaming charges may benefit incumbent owners of amortised infrastructure).

An extensive reform to replace the existing Data Protection Regulation from 1995 was introduced in 2012. Its objectives were to replace 28 national data protection laws by 1 Europe-wide set of laws. This was especially to help companies reduce costs of compliance and to increase consumers' trust through a single set of rules applying to data use across the EU. About €130 million in savings for simplified administrative procedures are expected. Moreover, important additions to the existing data protection were necessary to pay justice to the extensive use of social media.<sup>37</sup>

In 2015, the reform was enlarged to regulate so called "big data analytics" as well. Works on the precise phrasing of the regulation are still ongoing. It has been estimated that the efficient use of big data by companies would contribute to a GDP growth worth around €206 billion.<sup>38</sup>

In addition to a uniform legal base regulating the Digital Single Market, disputes need to be easily resolved, ideally circumventing courts. Without efficient international dispute management, lacking trust will continue to hinder the completion of the Digital Single Market. Online and Alternative Dispute Regulations (ODR/ADR) were supposed to be fully

<sup>37</sup> [http://europa.eu/rapid/press-release\\_IP-12-46\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-46_en.htm?locale=en) ; [http://ec.europa.eu/justice/data-protection/document/review2012/factsheets/3\\_en.pdf](http://ec.europa.eu/justice/data-protection/document/review2012/factsheets/3_en.pdf) ; [http://ec.europa.eu/justice/data-protection/document/review2012/factsheets/4\\_en.pdf](http://ec.europa.eu/justice/data-protection/document/review2012/factsheets/4_en.pdf) , [Accessed 11 September 2015].

<sup>38</sup> <http://ec.europa.eu/digital-agenda/en/digital-single-market> , [Accessed 11 September 2015].

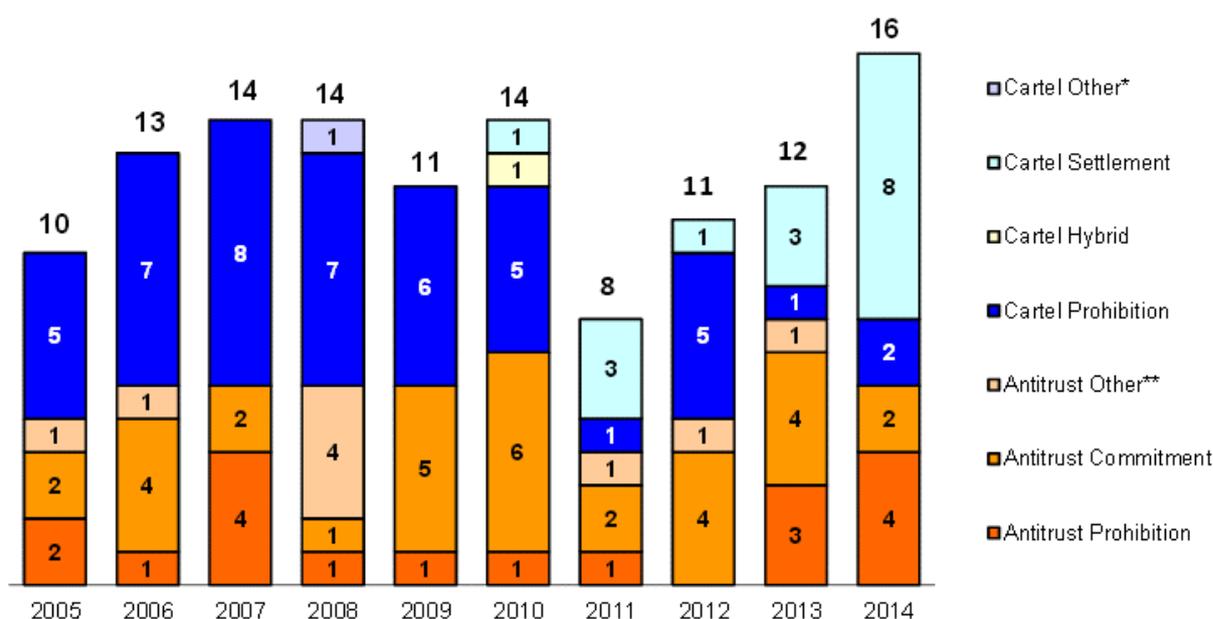
implemented tools in 2014. However, their implementation is not complete yet. While some parts of the system work already and are praised by involved parties, an EU-wide platform dedicated to disputes in online transactions won't be operable before 2016.<sup>39</sup>

Further, international roaming charges are still in operation across Europe, raising the cost of online access for mobile individuals and firms. Price differentials are large despite very homogeneous products and price reductions resulting from the liberalisation of the sector<sup>40</sup>.

### 2.2.3. Anticompetitive behaviour and unfair trading practices

Anticompetitive behaviour by companies, including cartels and the abuse of market power, harm consumers and prevent effective competition, including from cross-border entry. Activity levels of European competition enforcement are at an all-time high.

**Figure 10: Antitrust and cartel output**



\* Rejection of complaint \*\* Rejection of complaint, procedural infringement, penalty payment

Source: European Commission (2014).

However, it is unclear whether this is a result of more (or more effective) enforcement (which would reduce barriers) or more anticompetitive behaviour, which would mean that barriers are increased.

Below the threshold of behaviours that constitute formal infringements of EU competition law (conduct that comes under Articles 101 and 102 of the Treaty), a variety of **unfair trading practices (UTPs)** have been documented. These impose additional barriers to companies trading in the Single Market as they increase the costs and reduce the revenues of weaker parties. Unfair trading practices have recently come under scrutiny in the business-to-business food supply and franchising sectors<sup>41</sup>.

<sup>39</sup> [http://ec.europa.eu/consumers/solving\\_consumer\\_disputes/non-judicial\\_redress/adr-odr/index\\_en.htm](http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/adr-odr/index_en.htm), [Accessed 10 September 2015].

<sup>40</sup> See Pelkmans and Renda (2011) and DB Research (2013).

<sup>41</sup> See the European Parliament briefing note on "Unfair Trading Practices in the Business-to-Business Food Supply Chain". Available at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL\\_BRI%282015%29563430](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_BRI%282015%29563430) [accessed 16 January 2016].

#### 2.2.4. Information barriers

A lack of information about rights and obligations of businesses – what a business has to do if it runs into problems in a foreign market, and/or about whether a particular law or regulation contravenes EU law – has been cited<sup>42</sup> as a distinct obstacle for SMEs wishing to trade in other countries.

#### 2.2.5. Postal Services

In addition to the infrastructure-related barriers identified in the Commission's 2015 Report on 'Single Market integration and competitiveness in the EU and its Member States', postal services are also insufficiently integrated in order to fulfil the requirements of a fully integrated Single Market. SME e-retailers in particular are facing barriers to cross-border provision due to non-transparent parcel prices and limited interoperability between parcel carriers.<sup>43</sup> This has effects on the Digital Single Market: "62% of companies that are willing to sell online say that too high delivery costs are a problem"<sup>44</sup>.

The postal sector in the EU is worth around €91 billion (0.72%) of GDP. The value of letter services is estimated to account for €44 billion (0.34% of GDP).<sup>45</sup> The precise size of the market for parcels is more difficult to estimate as the definitions for what constitutes a parcel (size, weight specifications) are not uniform.

Following the Third Postal Services Directive from 2008<sup>46</sup>, the market for letters has been fully opened to competition in 2013, but competition levels remain below expectation. Nevertheless, service quality and affordability of letter services are satisfactory, in the domestic markets as well as across borders.

While letter volumes are constantly decreasing due to the increasing use of e-solutions, parcel volumes are on the rise. Letter volumes and revenues have been decreasing around 5% per year since 2007.<sup>47</sup>

Despite the fact that competition is much further developed in parcel delivery, service quality and especially cross-border interoperability need further improvements.<sup>48</sup> Some large parcel carriers operate to satisfaction across borders, but service quality is especially poor in remote and less advanced regions while exhibiting particularly high prices. Also, prices for cross-border deliveries are not transparent and appear completely decoupled from domestic costs of delivery.<sup>49</sup> Delivery charges are one of the biggest obstacles for consumers to complete cross-border purchases online. The potential savings, associated with the exploitation of the full range of available goods and services online are estimated to amount to €11 billion annually.<sup>50</sup>

<sup>42</sup> This was one of the issues raised by various officials and stakeholders in a session on SMEs and the Single Market at the 2015 SME Annual Assembly held on November 17-19 2015 in Luxembourg.

<sup>43</sup> Report from the Commission to the European Parliament and the Council on the application of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and 2008/6/EC), COM(2015)568 final.

<sup>44</sup> Digital Single Market Factsheet <http://ec.europa.eu/digital-agenda/en/digital-single-market>

<sup>45</sup> [http://ec.europa.eu/growth/sectors/postal-services/index\\_en.htm](http://ec.europa.eu/growth/sectors/postal-services/index_en.htm), [accessed 2 February 2016].

<sup>46</sup> Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008.

<sup>47</sup> Ibid. COM(2015)568 final, based on Universal Postal Union.

<sup>48</sup> WIK-Consult study for the European Commission (2014) 'Design and development of initiatives to support the growth of e-commerce via better functioning parcel delivery systems in Europe'

<sup>49</sup> Université Saint-Louis for the European Commission (2015) 'Econometric study on parcel list prices – Final Report'.

<sup>50</sup> European Commission (2015) Cheaper cross-border parcel delivery to boost e-commerce in the EU.

### 2.2.6. The Role of Consumers and Consumer Protection in Financial Services

Financial products and services have the potential to severely disrupt the Single Market. In the run-up to and during the financial crisis, the distribution of inappropriate products and mis-selling techniques have led to severe instabilities in the financial markets. Market oversight authorities have subsequently sought to regulate the banking sector (e.g. Basel III). However, market disruptions are not entirely caused by the supply side but the demand side (i.e. consumers) also plays an important role in ensuring stability.<sup>51</sup>

It is commonly found that consumers have difficulties understanding and evaluating financial products. Consumers possess limited attention and often also limited financial education needed to assess products correctly. Therefore, mis-selling of financial products and services may cause harm to the Single Market through the burden laid upon individual consumers as well as by causing harm to wider financial stability.<sup>52</sup> These interrelationships between financial services providers, regulators and consumers call for a reinforced role of consumer protection in the financial services market as a means of reducing barriers to the Single Market.

Furthermore, consumers cannot fully benefit from the Single Market as many financial offers are dedicated to domestic markets only. For example, while it is legally possible to provide and purchase insurance from other Member States, such services do not exist and consumers are commonly refused access to purchases based on their country of residence.<sup>53</sup>

### 2.2.7. Trustmarks

Trust is a key limiting factor in cross-border commerce. Many consumers have concerns while shopping online, these concerns are reinforced when shopping online across-borders. Large brands can capitalise on trust based on their names. Smaller retailers and service providers on the other hand face significantly larger barriers to the Single Market. Key limitations also arise due to limited availability and conformity in Online and Alternative Dispute Resolution solutions (ODR/ADR). Trust marks often provide their own ADR solutions which supports consumer rights.<sup>54</sup>

Currently, there are many different trust marks in use across the EU Member States with different levels of recognition and different standards of certification. A pan-European trustmark provided by an independent third party could potentially help overcome such barriers.<sup>55</sup>

## 2.3. Regulatory barriers

### 2.3.1. National regulatory barriers and market fragmentation

Differences in national legal frameworks continue to impede the development of the Single Market in a number of ways. For example, the European Commission estimates<sup>56</sup> that “small online businesses wishing to trade in another EU country face around €9,000 extra costs for having to adapt to national laws”; and that “if the same rules for e-commerce were applied in all EU Member States, 57% of companies would either start or increase

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<sup>51</sup> European Parliament (2014) ‘Consumer Protection Aspects of Financial Services’.

<sup>52</sup> European Parliament (2014) ‘Consumer Protection Aspects of Financial Services’.

<sup>53</sup> ECC-Net (European Consumer Centres’ Network) (2014) ‘Der europäische Versicherungsbinnenmarkt – The European Internal Market for Insurance’.

<sup>54</sup> ECC-Net (European Consumer Centres’ Network) (2013) ‘Trust marks report 2013 - “Can I trust the trust mark?”’, available at: [http://ec.europa.eu/dgs/health\\_food-safety/information\\_sources/docs/trust\\_mark\\_report\\_2013\\_en.pdf](http://ec.europa.eu/dgs/health_food-safety/information_sources/docs/trust_mark_report_2013_en.pdf), accessed 2 February 2016.

<sup>55</sup> European Parliament (2012) ‘A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities’.

<sup>56</sup> Digital Single Market Factsheet <http://ec.europa.eu/digital-agenda/en/digital-single-market>

their online sales to other EU countries". VAT compliance costs alone are estimated to be at least €5,000 per year for each member state that a small online businesses wishes to supply.

Costs associated with divergent data protection laws, other compliance issues and transportation represent additional barriers to an integrated Digital Single Market: 30-40% of companies that do not operate in countries other than their home country refrain from international trade due to a fear of additional costs linked to compliance, differences in tax/VAT systems, fraud, and contractual terms.

Another example is customs<sup>57</sup>, where differences in sanctioning and enforcement against infringements of customs rules lead to legitimate businesses facing higher costs when operating across jurisdictions with different sanctions and enforcement regimes. The existence of different sanctions regimes can distort trade flows and patterns of economic activity in the Single Market and confer advantages on companies operating in countries with more lenient systems.

Moreover, non-harmonised customs sanctioning systems of the Member States may induce illicit traders to displace their trade and choose those Member States where the risk of discovery and the severity of the penalties are low. This can create an imbalance in the size of shadow economy across different countries, which in turn creates further imbalances to the detriment of legitimate operators.

### 2.3.2. Non-harmonised e-government as a barrier to the Digital Single Market

The 'digital by default' paradigm is far from realised and the number and type of public services accessible online varies across member states. A lack of awareness, understanding and trust in e-government services continue to prevent many citizens from fully utilising the services which are already functioning. However, the biggest obstacles to full exploitation of e-government potentials relates to the slow pace of service implementation and the continuing lack of interoperability between Member States.<sup>58</sup> Trust deficits continue to prevent many citizens from fully utilising available e-government services. The lack of digitisation of government services is both a barrier in itself and a result of higher-order barriers, notably closed standards and the lack of common frameworks, and user trust.

Not being able to use fast and convenient services implemented online is costly, especially in areas affecting business, such as the administrative processes necessary for setting up a business and trading across member states<sup>59</sup>. In addition, the lack of European e-ID or compatible e-Trust services on a European level affect the digitisation of government services (national and European) as well as businesses operating in digital markets across Europe.

European initiatives can help by pioneering good practice, making 'digital by design' a reality throughout the European institutions, adhering to and promoting open standards; supporting research and development in relevant fields and supporting the creation and adoption of a e-trust/e-ID framework for the EU.

European institutions can play an important role through promotion and use of open standards in software and data (Open Data Charter) and secure data sharing.

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<sup>57</sup> See the forthcoming (2016) study "Analysis and effects of the different Member States' customs sanctioning systems" by LE and PwC.

<sup>58</sup> European Parliament (2013) 'Ubiquitous Developments of the Digital Single Market'.

<sup>59</sup> Chapter 4 discusses the potential of ICT solutions, e-government and ubiquitous services in reducing costs in the Single Market. In particular, cost saving examples from Estonia are displayed in Section 4.5.2.

### 2.3.3. Restrictions on cross-border data flows

Restrictions on cross-border data flows (including privacy and IP rights related restrictions) represent a barrier to the Digital Single Market in an area that has considerable upside potential for the European Economy. Data location requirements (which can exist at sub-national level or in sector-specific context, especially where sensitive personal data is concerned) and a lack of common standards and interoperability can be harmful as they limit the extent to which economies of scale can be built. Intellectual property rights laws still allow right holders to use geographically restricted licenses. Although, under European law and consumers' freedom of access to goods and services within the Digital Single Market, such practices are no longer permissible.<sup>60</sup>

In the Trusted Cloud Europe report, the European Cloud Partnership's Steering Board noted that "member states' practices and in some instances national laws restrict the possibility of storage and processing of certain data (especially public sector data) outside their territory"<sup>61</sup>.

Currently 19% of companies across the EU are using paid cloud services. If all barriers were removed, it is estimated that cloud computing could contribute €450 billion to EU GDP between 2015 and 2020 and enable the creation of one million jobs and 300,000 companies in Europe<sup>62</sup>. The European Parliamentary Research Service (EPRS) estimates the cost of an incomplete Digital Single Market for cloud computing at between €31.5 and €63 billion per year<sup>63</sup>.

A key enabler for cloud computing in Europe that was identified by the Cloud Select Industry Group (C-SIG) is the use of standard Service Level Agreements<sup>64</sup>. Disseminating best practices (model contract terms) for cloud services and ensuring compatibility with the main legal instruments (data protection Directive) are key tasks for European policymakers<sup>65</sup>.

### 2.3.4. Over-regulation of digital business models

National restrictions on digital services have been on display in recent years, notably with respect to the so-called sharing economy, some exponents of which have met strong opposition by incumbents and policymakers in the member states. Another example is privacy-related attacks on the business practices of social networks. The uneven treatment of digital services across member states may foreclose markets to disruptive innovators, with potentially large effects on competitiveness, due to the network economies involved in many digital services.

Start-ups with potential for fast growth are encumbered by rules that raise the cost of pan-European operations, including establishment (e.g. to register a website in a national top-level domain, which in some cases requires businesses to provide a physical address in the country in question) and VAT rules. The new VAT rules are a particularly intricate problem as they continue to represent a high barrier for small enterprises, while at the same time addressing legitimate concerns about tax avoidance by large companies.

<sup>60</sup> European Parliament (2013) Study on the Discrimination of Consumers in the Digital Single Market, p. 77 ff.

<sup>61</sup> European Cloud Partnership (2014). 'Establishing a Trusted Cloud Europe: A policy vision document by the Steering Board of the European Cloud Partnership'. Available at <http://ec.europa.eu/digitalagenda/en/news/trusted-cloud-europe> [Accessed 11 September 2015]

<sup>62</sup> 'Uptake of Cloud in Europe', IDC, 2014.

<sup>63</sup> Pataki (2014). 'The Cost of Non-Europe in the Single Market'. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/510981/EPRS\\_STU\(2014\)510981\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/510981/EPRS_STU(2014)510981_REV1_EN.pdf) [Accessed 22 September 2015].

<sup>64</sup> <http://ec.europa.eu/digital-agenda/en/cloud-computing-strategy-working-groups>.

<sup>65</sup> Expert Group on Cloud Computing Contracts. Available at: [http://ec.europa.eu/justice/contract/cloud-computing/expert-group/index\\_en.htm](http://ec.europa.eu/justice/contract/cloud-computing/expert-group/index_en.htm) [Accessed 22 September 2015].

A further concern is the application of competition law in digital markets where the dynamics of competition are currently not well understood<sup>66</sup>. The slow process of competition enforcement in complex (and large) cases (examples include the Microsoft cases and the current Google investigation) is a particular concern in fast-moving digital markets<sup>67</sup>, where a) delays in launching unobjectionable products and services may have deleterious effects on welfare and b) positions of market power are prone to rapid erosion.

An appropriate European policy response should be based on the principle that consumers, not incumbent operators need protection. With respect to the 'sharing economy', barriers in the form of measures that protect incumbents at the expense of innovative entrants including unduly stringent certification/safety requirements should be reconsidered and relevant European guidelines developed. An appropriate framework would enable disruptive innovation and 'creative destruction', while ensuring a level playing field for traditional operators by applying the same substantive standards in terms of product safety, environmental standards, tax liabilities, etc.

### 2.3.5. Regulatory barriers to the Single Market in services

A number of service sectors 'suffer from quite acute regulatory distortions which limit inter-EU competition'<sup>68</sup>, in particular network industries, retail and professional services. Some member states still maintain restrictions on service providers based on nationality or place of residence<sup>69</sup>. The majority of member states treats providers from other member states like domestic providers, but in some cases this carries with it duplicate obligations (e.g. to purchase insurance covering activities in the host country). National requirements regarding minimum qualifications, occupational licensing and other restrictions are still commonplace in many service sectors<sup>70</sup>. Member states regulate up to 368 distinct service occupations, with 25% of all occupations being regulated in only one member state, which casts doubt on the necessity of many of these regulations.

Access restrictions and the differences in the regulation of occupations are a serious barrier for intra-EU trade in services. While professional services in some countries (the UK, Sweden, Ireland and Finland) are less regulated than in the U.S., many (including Italy, Luxembourg and Slovenia as well as Germany) show high levels of restrictiveness. In total, the payoff from services liberalisation is likely to be very substantial<sup>71</sup>. Services generate 70% of value added in the EU, but only account for 20% of intra-EU trade<sup>72</sup>. The 2014 'Mapping the Cost of Non-Europe' report estimates that realising the untapped potential of the Single Market in services amounts to €39 billion per year. The European Commission's own impact assessment of the Services Directive estimated in 2012 that full implementation of the Directive would add 1.8% to EU GDP (in addition to the 3% increase due to a fully realised Digital Single Market).

<sup>66</sup> Competition in platform markets for example is a very active area in economic research, and a number of examples suggest that competition enforcement is currently lagging behind theoretical developments. See for example Kühn's (2015) observations on recent cases concerning hotel booking platforms (<http://competitionpolicy.ac.uk/documents/8158338/9330040/Kai-Uwe+Kuhn+-+CCP+Conference+2015.pdf/9f5e3734-693b-4c46-876a-ac92f7e202e0>); De Los Santos, B. And Wildenbeest, M. R. (2015) on 'E-book Pricing and Vertical Restraints 'E-Book Pricing and Vertical Restraints'. NET Institute Working Paper No. 14-18 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2506509](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2506509).

<sup>67</sup> UK Non-paper (2015).

<sup>68</sup> Mariniello et al. (2015).

<sup>69</sup> Busch, B. (2013). 'Europas Binnenmarkt – Wirtschaftsraum mit Potenzial'. *Konrad Adenauer Stiftung and Institut der deutschen Wirtschaft Köln*, p. 22.

<sup>70</sup> Bush, B. (2013) highlights the example of a British Ski instructor being arrested by French police for operating without a licence (p. 37).

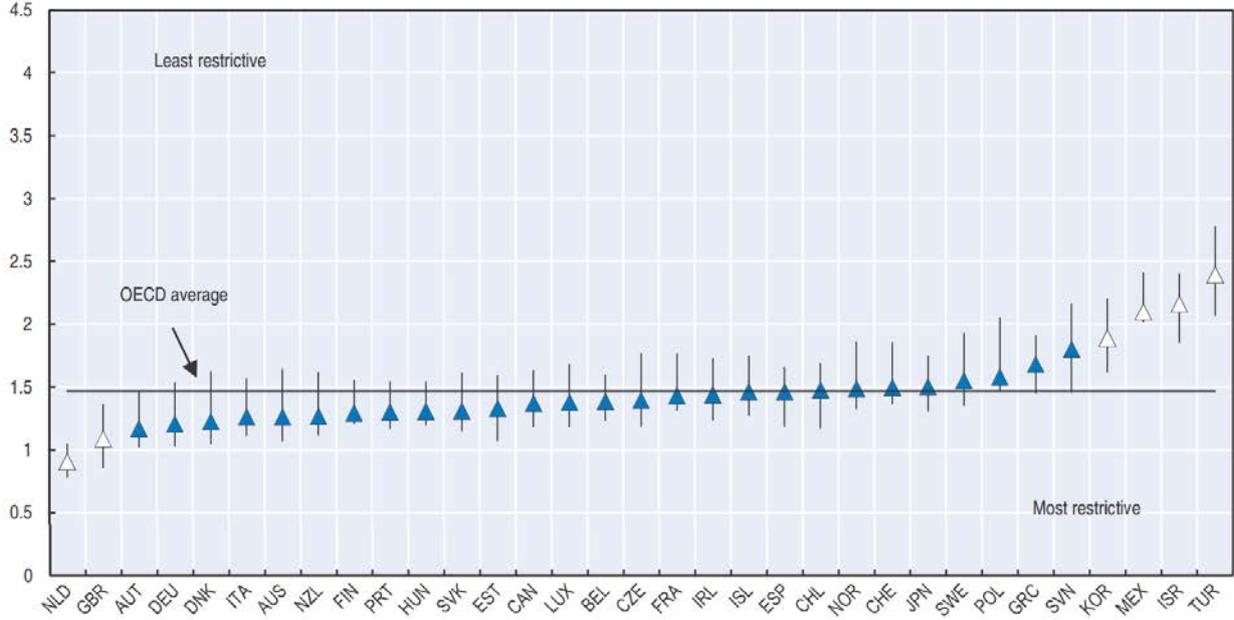
<sup>71</sup> It was estimated up to 0.3-0.7 percent of EU GDP in 2006, not including dynamic effects. Bruin et al. (2006). 'The trade-induced effects of the Services Directive and the Country-of-Origin Principle'. *CEPS ENEPRI Working Paper No. 44*.

<sup>72</sup> Dunne, J. (Ed.) (2015). 'Mapping the Cost of Non-Europe'.

2.3.6. Barriers through sector and product market regulation

Businesses operating across borders still have to contend with marked differences in the national product market regulation regimes. While the OECD Index for Product Market Regulation<sup>73</sup> shows that European countries have made major progress in deregulating their product markets since 1998, differences within the EU persist and force businesses to adapt their products and services to comply with multiple standards<sup>74</sup>. This raises the cost of cross-border trade and dampens competition by shielding domestic firms from foreign entrants. Moreover, since scale economies are reduced by the need to run different product lines, the burden falls disproportionately on SMEs. Finally, differences in standards impede the development of pan-European supply chains and make it difficult to exploit the benefits of specialisation as a key competitive advantage.

**Figure 11: OECD economy-wide product market regulation (PMR) score in 2013**  
Index scale 0 to 6 from least to most restrictive



Source: OECD

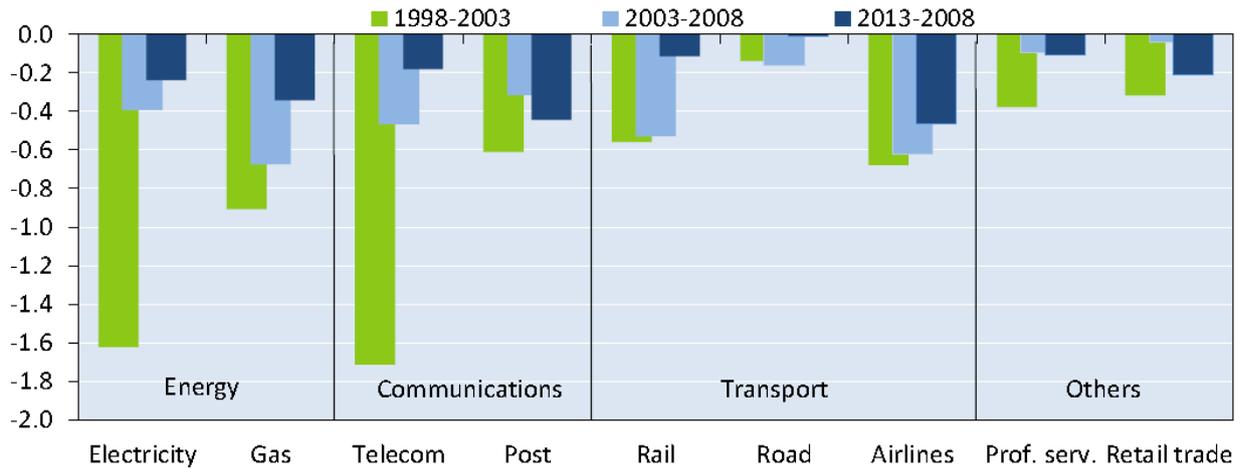
While many European countries have low levels of restrictiveness in their product market regulation as measured by the OECD, marked differences are still evident. This means that even if restrictiveness is not a major problem overall, market integration is still significantly impeded by different treatment of the same products in different member states.

While progress has been made across different sectors, restrictions persist, particularly in the professional services, road transport and retail sectors (Figure 12).

<sup>73</sup> Koske et al. (2015).

<sup>74</sup> Guimaraes, H. and Egan, M. (2014). 'Barriers to Business in the Single Market'.

**Figure 12: The sector composition of reforms – Average change in score across OECD countries**



Source: Koske et al. (2015), Figure 18, p. 30 (based on OECD Product Market Regulation Database).

2.3.7. Regulatory barriers to the Single Market in public procurement

Public procurement continues to be overwhelmingly national<sup>75</sup>. Less than 20% of all public procurement in the EU is publicised on pan-European platforms. As Mariniello et al. (2015) point out, ‘this is because public procurement enjoys significant exceptions to the obligations established by EU Single Market Directives’. The Single Market Scoreboard reveals the extent of the problem.

**Figure 13: Public procurement by member state (Single Market Scoreboard)**



\* This composite indicator does not capture many key aspects of national public procurement, and thus gives only a partial view of member states' performance.

Source: Single Market Scoreboard

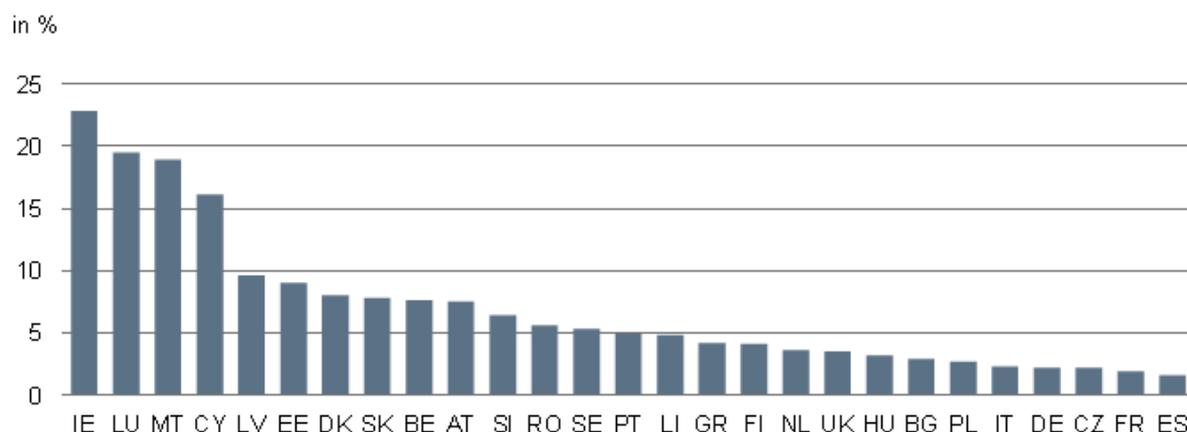
A recent (2015) Special Report by the European Court of Auditors<sup>76</sup> found that although the Commission and member states have started to address the “lack, or complete absence, of fair competition and/or the award of contracts to those who were not the best bidders”, there is still “a long way to go and efforts need to be intensified”.

A striking feature of the public procurement landscape in Europe is the extent to which a smaller percentage of contracts is awarded to foreign firms in the larger member states. “The fact that in Italy, Germany, France and Spain less than 3% of all public-sector contracts are awarded to foreign firms is not in keeping with the spirit of cross-border competition in the Single Market.”<sup>77</sup>

<sup>75</sup> Ilkovitz et al. (2007).

<sup>76</sup> European Court of Auditors Special Report No. 10 (2015). ‘Efforts to address problems with public procurement in EU cohesion expenditure should be intensified’. Available at: [http://www.eca.europa.eu/Lists/ECADocuments/SR15\\_10/SR\\_PROCUREMENT\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR15_10/SR_PROCUREMENT_EN.pdf) [Accessed 22 September 2015].

<sup>77</sup> DB Research (2013).

**Figure 14: Share of public-sector contracts with successful foreign bid, 2006-2010**

Source: PwC (2011) in DB Research 2013

### 2.3.8. The economic potential of EU-level harmonisation

The body of research on the 'cost of non-Europe', including the 2013 Study on 'the cost of non-Europe: the untapped potential of the European Single Market' (London Economics and PwC, 2013) and the recent work by the EPRS (Dunne (Ed.), 2015 and Pataki, 2014), together with more targeted research such as Alleweldt et al. (2014) and Bolognini and Legovini (2012) can be combined in an attempt to quantify the cumulative effect of barriers in the Single Market, and hence the economic potential of EU-level harmonisation. The costs of non-Europe are not only costs incurred by businesses (or administrations), but economic costs, including the cost of inaction in terms of economy-wide inefficiency and growth.

The available sources have another drawback: while in some cases, the mapping of costs to individual barriers is straightforward (e.g. public procurement), in other cases (e.g. Digital Single Market, product market regulation), **different barriers (including both market and regulatory barriers) intersect, which makes it much more difficult to assess the impact (cost) of individual barriers and to use the available estimates as a tool to prioritise concrete policy actions.**

The available evidence on the 'cost of non-Europe' and similar research can be seen as a quantification of the **cumulative barriers by policy area**, where 'policy area' is a pragmatic concept that ranges from the tangible and specific (public procurement) to the broad and artificial<sup>78</sup> (Digital Single Market). The following table shows the high-level policy areas in order of magnitude. A more precise measurement of the magnitude of existing barriers is not currently available to European policy makers.

<sup>78</sup> In the sense that it doesn't correspond to a well-defined set of economic activities.

**Table 6: Priority policy areas by magnitude of potential benefit**

No.	Policy area	Benefits from reducing costs & barriers (savings and contributions to growth)
1.	<b>Digital Single Market</b>	<p>Potential GDP gains from completing the Digital Single Market: €415bn per year<sup>1)</sup></p> <p>Up to 4% increase in EU GDP over 2010-2020 resulting from completing the Digital Single Market.<sup>2)</sup></p>
2.	<b>Services</b>	<p>Potential GDP gains from closing gaps in the EU Single Market in free movement of services: €338bn<sup>3)</sup></p> <p>0.8-2.6% increase in EU GDP in the long run since adoption of the directive resulting from its full implementation and enforcement.<sup>4)</sup></p> <p>EUR 100-304 billion in savings in total resulting from full implementation of the Services Directive.<sup>5)</sup></p>
3.	<b>Product market regulation</b>	<p>Cost of non-Europe in free movement of goods: 183bn per year<sup>6)</sup></p> <p>2.2-3.3% increase in EU GDP in 2005 resulting from goods market integration over the 1960-2000 period; and 2.2-8.8% increase in EU GDP in the very long run – resulting from full integration of goods markets.<sup>7)</sup></p> <p>Increase of EUR 183-269 billion in the total value of merchandise exports between Member States in the long term resulting from removal of barriers to FDI and non-tariff barriers within the internal market for goods.<sup>8)</sup></p> <p>1.8% increase in EU GDP resulting from perfect operation of Regulation 764/2008 (mutual recognition).<sup>9)</sup></p>
4.	<b>Public procurement</b>	<p>Potential GDP gains from closing gaps in the EU Single Market: e-procurement: €100bn per year<sup>10)</sup></p> <p>Public procurement and concessions: €36bn per year<sup>11)</sup></p> <p>Administrative burden of procurement procedures €216.3m per year<sup>12)</sup></p> <p>Potential efficiency gains in through greater cooperation/ efficiency gains in the defence industry: €10bn per year<sup>13)</sup></p> <p>0.1-0.5% increase in EU GDP over 2011-2021 resulting from savings related to public procurement directives (prior to revision), if the directives applied to all EU public procurement.<sup>14)</sup></p> <p>Potential savings of EUR 36.5-66.5 billion annually resulting from closure of remaining gaps in EU public procurement legislation.<sup>15)</sup></p>

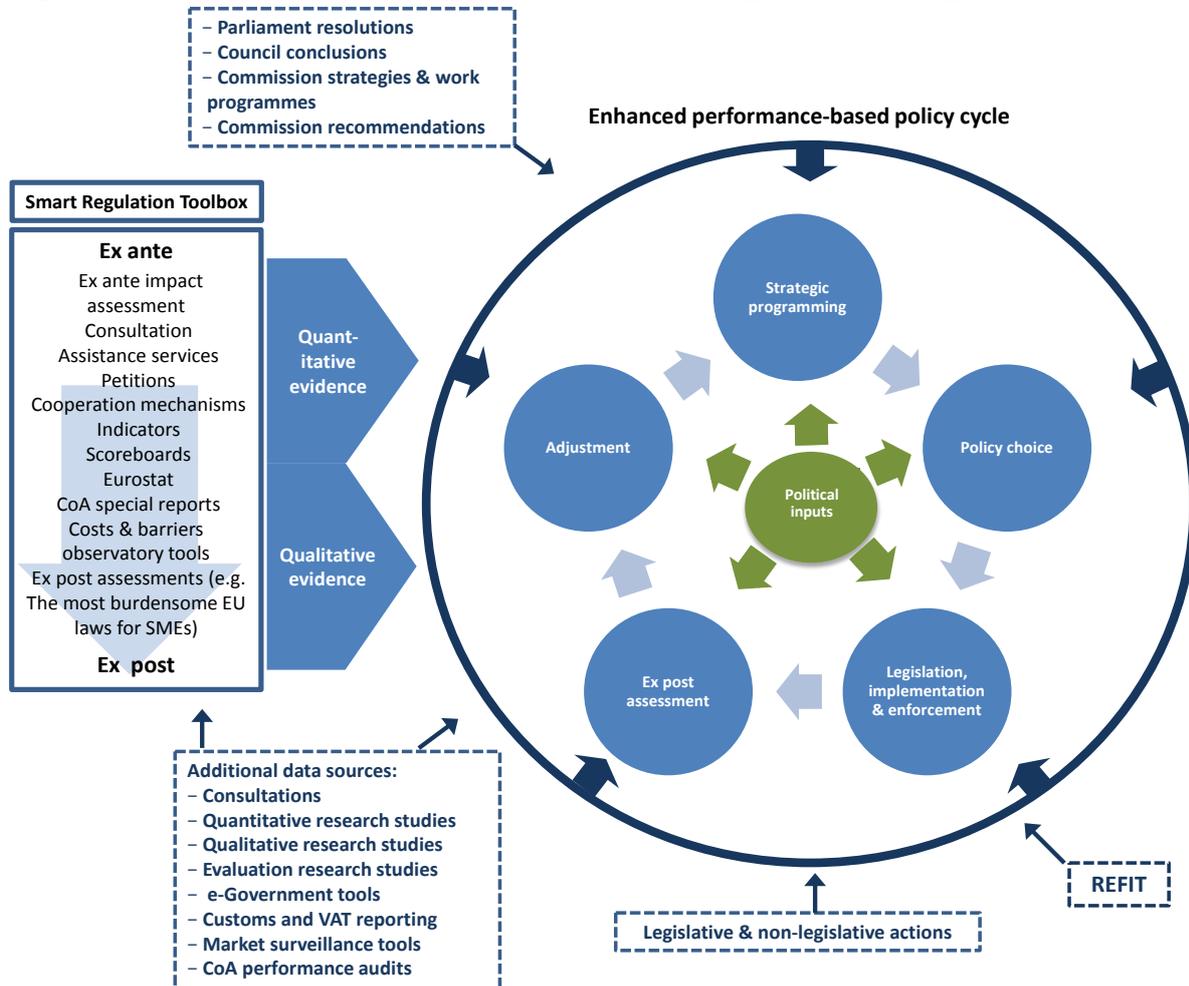
**Source:** 1) Dunne, J. (Ed.) (2015). p. 16. This is the entire 'cost of non-Europe' in the Digital Single Market. 2) Alleweldt et al. (2014), Table 3, p. 16. 3) Pataki (2014), Table 1, p. 9. 4) Alleweldt et al. (2014), Table 3, p. 17. 5) Alleweldt et al. (2014), Table 3, p. 17. 6) Pataki (2014) Table 1, p. 9. 7) Alleweldt et al. (2014), Table 3, p. 16. 8) Alleweldt et al. (2014), Table 3, p. 16. 9) Alleweldt et al. (2014), Table 3, p. 17. 10) Pataki (2014) Table 2, p. 9. 11) Pataki (2014) Table 1, p. 9. 12) See High Level Group on Administrative Burden (2014), p. 33. 13) Dunne, J. (Ed.) (2015). p.78 14) Alleweldt et al. (2014), Table 3, p. 17. 15) Alleweldt et al. (2014), Table 3, p. 17.

### 2.3.9. Prioritising policy actions

The diverse nature of the barriers and costs discussed above and the patchiness of available quantifications of impacts mean that prioritisation of policy actions is challenging and currently cannot be undertaken as rigorously as the smart regulation paradigm requires.

Implementing a consolidated system for smart Single Market regulation, making use of existing and to-be-developed observatory tools for barriers and costs is a necessary precondition for robust prioritisation of policy actions that is currently not in place.

**Figure 15: A consolidated system for smart Single Market regulation**



**Source:** London Economics, (2015). 'Smart Single Market Regulation'.

However, the available quantification allows us to identify four priority areas according to the topology used in the policy literature, including the 'Cost of Non-Europe' reports. This topology is precise in the case of public procurement, a tangible and well defined area governed by its own set of rules, which consequently appears the most straightforward to address. It is less concrete in the other three cases: many potential policy actions are available to address barriers and costs in the broad areas 'services', 'products' and 'digital'. Moreover, there are a clear linkages between them, notably between services and the Digital Single Market, by virtue of services being increasingly delivered in digital form. These 'summary categories' are headings under which a diverse policy programme is needed to achieve the quantified benefits indicated by the research cited above. As such, the priority areas are in part reflected in ongoing policy programmes: it would be difficult to

make economic policy on the European level without addressing the issues affecting services, product market or the digital economy.

Nonetheless, smart regulation requires that strategic priorities focus on the policy areas indicated by the ranking of quantified impacts: Digital Single Market, services, product market regulation and public procurement. Within these policy areas, the barriers and costs discussed above should be addressed as directly and as efficiently as possible.

#### **a. Priority actions in the Digital Single Market**

The Digital Single Market is held back by both regulatory and market barriers. Priority actions relate to the **lowering of market barriers and transaction costs** and the **creation of enabling frameworks (e-government)** to promote Europe-wide economic activity in the digital sector and the wider economy.

In terms of market barriers, technical restrictions on accessing content in other member states (geo-blocking) and consumer discrimination in cross border transactions warrant an urgent policy response.

Connected to this is the question of consumer trust, which can be addressed with effective, fast, visible and easy-to-access dispute resolution mechanisms (steps in this direction are being undertaken).

Further, a pan-European trustmark could help reduce barriers and increase cross-border trade in the Single Market through:

- supporting SMEs;
- overcoming language barriers;
- increasing legal certainty; and
- increasing credibility and recognition of accredited trustmarks.

However, the introduction of an EU trustmark would also impose new costs and barriers, for example related to the necessary design and diffusion of it, provision of a legal basis to support the trustmark, and enforcement mechanisms to oversee compliance. To achieve a high level of recognition, a uniform trustmark would need to satisfy requirements of all Member States, at least via a code of conduct. For some Member States, such requirements could be very high in comparison to current standards, thus imposing large costs of compliance.<sup>79</sup> Other market barriers, such as language barriers warrant monitoring, but might be best addressed through emerging technical solutions (seamless real-time automated translation).

In terms of enabling frameworks, comprehensive and coordinated e-government is crucial, as a measure to directly reduce unnecessary compliance costs for businesses and administrative costs for government; and as a catalyst for cross-border trade and mobility; and a tool to improve access to information for business, consumers and government.

Building on existing solutions such as Your Europe and SOLVIT, European solutions (including harmonisation of existing national frameworks) should be attempted subject to condition that compliance obligations and effective national solutions are not duplicated, but instead market fragmentation due to divergent national approaches is remedied, while using the most efficient tools available. Customs, VAT, business registers, and monitoring of consumer discrimination are obvious candidates for comprehensive European e-government solutions.

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<sup>79</sup> European Parliament (2012) 'A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities'.

## **b. Priority actions in the Single Market for services**

With regard to services, it has been a feature of economic development in recent decades that the manufacturing sector has declined in importance, with the industrial share of value added falling continuously since the 1990s. This, together with the fact that manufactured goods are more tradable than services, represents a large part of the explanation for the shortfall in the benefits of the Single Market compared with earlier expectations<sup>80</sup> and provides a powerful rationale for focusing policymaking efforts on completing the Single Market in the services domain.

An important consideration when judging the value of the Single Market in services is the extent to which cross-border trade in services is increasingly enabled by technology. Services that traditionally could only be provided locally and were therefore not tradable across borders have moved online, where they can be bought remotely anywhere over the internet. Classic examples of location-specific services such as catering, cleaning and taxi services now have valuable tradeable components. The potential of digital services to scale quickly gives them an important role in realising the potential of economic integration.

In addition to benefits directly from increased cross-border trade and increased competition, synergies between services and the manufacturing industry are a channel through which substantial additional benefits can accrue<sup>81</sup>. Services and manufacturing often have a symbiotic relationship: differentiation of functions within large manufacturing firms has given rise to a whole stratum of high value added services that support manufacturing in areas from R&D and design to marketing (in addition to the more traditional business services like accountancy and finance). The Single Market for services can thus raise further the competitiveness of European high-tech manufacturing. Moreover, technological developments such as 3-D printing could in time lead to a greater share of European manufacturing being transformed into a “service” largely delivered online, akin to the development seen with ‘non-tradeable’ services, which adds to the urgency of Single Market policy in this area.

The policy response – as the services market – is multifaceted, encompassing the recognition of professional qualifications, local planning laws and overlapping to an increasingly large degree with the Digital Single Market programme, as many services can be efficiently traded online.

The full implementation of the Services Directive and the extension of the “country of origin principle” to additional sectors (financial, transport and postal services, telecommunication, healthcare as well as electricity and water supply) would remove some of the key remaining barriers to the Single Market.

The 2013 London Economics study on ‘The cost of non-Europe: the untapped potential of the European Single Market’ provides a detailed analysis of policy options to remedy the performance gap in six service sectors<sup>82</sup> The proposed measures include:

- Removal of anti-competitive legislation that harms the interests of foreign entrants, size limitations on retail outlets and local zoning; restrictions on opening hours; and barriers to the freedom of sourcing;

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<sup>80</sup> DB Research (2013).

<sup>81</sup> “Looking at the impact of adopting best practices in each upstream sector, the highest productivity gains originate from reforms in retail trade and the professional services” Bourlès, R. (2010). ‘Do product market regulations in upstream sectors curb productivity growth? Panel data evidence for OECD countries.’ NBER Working Paper 16520. Available at: [www.oecd.org/eeco/growth/46479501.pdf](http://www.oecd.org/eeco/growth/46479501.pdf).

<sup>82</sup> Construction; retail; architecture and engineering services; wholesale trade in construction materials; land transport of freight; and hotels.

- Standardisation of contracts, liability and insurance rules for professional services; creating a level playing field in public procurement (see above);
- As well as more generally the enforcement of competition law; the harmonisation of rules and regulations; and the transposition of relevant EU Directives, and especially the Services Directive.

The 2015 UK Non-paper on “deepening the Single Market in goods and services” further calls for:

- Common training frameworks (professional card)
- Mutual recognition (services passport)
- Abolishing unnecessary rules on company ownership for professionals.

SMEs potentially benefit from all measures that lead to further integration of the Single Market, at least in the longer term. However, a few distinct actions have been identified that would benefit SMEs in particular.

- More robust information campaigns **informing SMEs** about available information resources and EU and national contact points
- Adoption of a **29th sales contract law** (an EU law which could be used instead of the national law if the parties to the contract agree)

The quantitative impact of these measures is considered to be high, as such measures would make it easier for SMEs to participate in the Single Market.

The diversity of barriers in the services sector means that it is an area inherently difficult to tackle and requiring a high level of engagement and cooperation from member states. It falls into the high pay-off/high-effort category.

### c. Priority actions in the area of product market and sector regulation

Harmonisation at a low level of restrictiveness (towards the most open regimes found in countries such as the UK and the Netherlands) is the adequate regulatory response to foster further market integration and trans-European competition.

The largest contribution to closing the gap to the best performing member state in terms of productivity would be in: real estate (14.9%), construction (6.4%), education (6.0%), Public administration and defence (5.8%); Health and social work (4.6%), retail (4.3%) and wholesale (3.2%) trade and professional services (3.9%).<sup>83</sup>

The reduction of VAT complexities in the case of non-digital goods (a business is required to register with the VAT authorities of all the Member States to which they sell and remit

Priority area 4: public procurement

### d. Priority actions in the area of public procurement

Directives 2004/17/EC and 2004/18/EC cover approximately 20% of all public procurement according to the EC. An extension of the relevant rules to additional areas, including goods and services in the health, education, social care sectors could have substantial benefits. Defence procurement (including the implementation of Directive 2009/81/EC) deserves additional attention, given the status of defence procurement as outside the purview of the

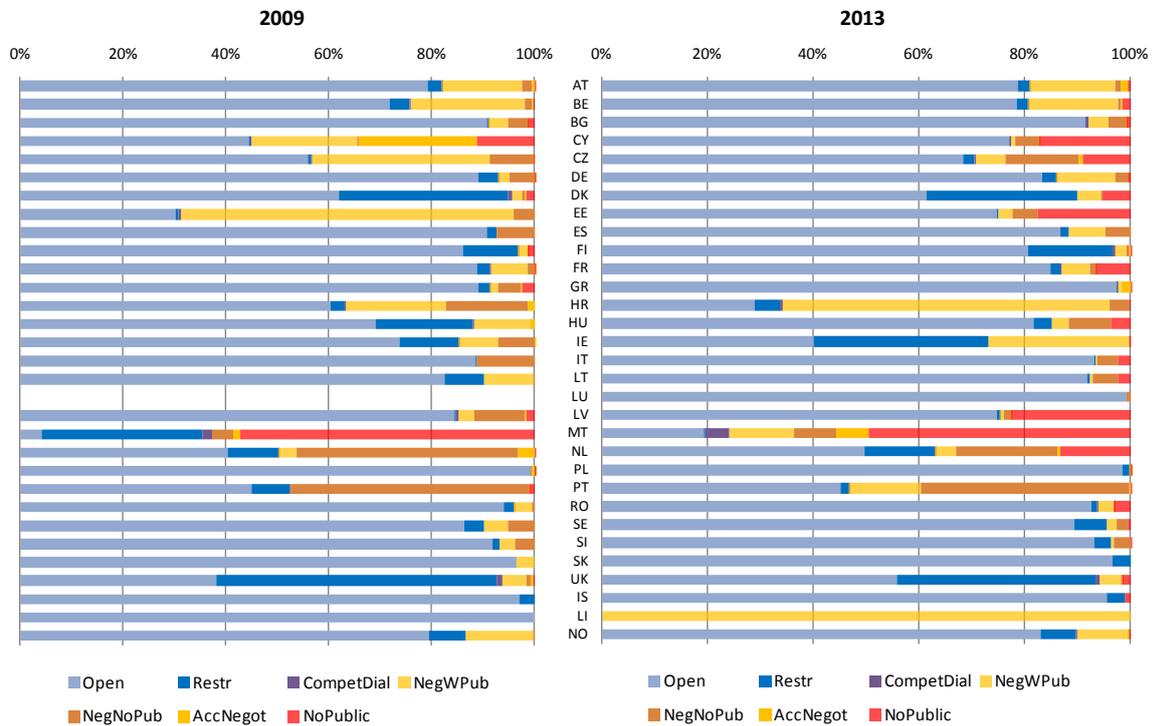
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<sup>83</sup> See LE and PwC (2013). ‘Study on ‘The cost of non-Europe: the untapped potential of the European Single Market’’, Table 4, p. 28.

ordinary procurement Directives and the high potential savings (26.4 billion in the European Parliament’s estimate<sup>84</sup>).

In addition, the use of restricted procedures needs to be examined. While the use of restricted procedures in public tenders has decreased over time, it is still common across virtually all member states.

**Figure 16: Public procurement: choice of procedure, 2009 vs. 2013**



**Source:** TED, in JIIP, VVA, Spark & London Economics (2015).

Further, a 2011 study for DG Markt<sup>85</sup> found that:

- open procedures have the lowest contract values of all procedure types; and
- authorities that choose open procedures assign most importance to attracting foreign bidders.

The promotion of open procedures is likely to be an effective lever in increasing the share of foreign bidders, thereby increasing competition to the benefit of public authorities.

Overall the priority actions, summarised in the figure below, are:

- Extend the scope of Directives 2004/17 and 18 to cover network industries (water, energy, transport, telecommunications and postal services), financial services, broadcast media.
- Ensure universal use of e-procurement (to foster competition and alleviate administrative burden from procedures for the award of public contracts (public works, supply and service contracts)
- Implement Directive 2009/81 (universal applicability of negotiated procedure with publication in defence procurement)

<sup>84</sup> Dunne, J. (Ed.) (2015).

<sup>85</sup> Ecorys, London Economics and PwC (2011). ‘Public procurement in Europe - Cost and effectiveness’.

## 2.4. Excessive cost imposed by EU legislation

EU-level regulation entails a trade-off between the market failure the regulation tries to address and the cost it imposes. Costs do not only include the direct cost of compliance, but also opportunity costs, the costs caused by non-compliance and dynamic costs (in terms of resources diverted away from productivity-enhancing activities/innovation).

### 2.4.1. The 10 most burdensome EU laws for SMEs

The European Commission has made efforts to understand the regulatory barriers faced by businesses. One of the high-profile attempts to identify such barriers was a 2012 survey of European SMEs to identify the most burdensome EU laws. The following 11 (sic) laws were identified<sup>86</sup>:

**Table 7: The most burdensome EU laws for SMEs**

No.	Laws	Indicative quantification*
1.	REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals)	n/a
2.	VAT - Value added tax legislation	Taxation / Customs: €87,005m** Annual savings for businesses of EUR 9-20 billion resulting from implementation of a common EU standard VAT return. Further simplification an automation of VAT in the context of a Zero ***
3.	General Product Safety and market surveillance package	n/a
4.	Recognition of professional qualifications	n/a
5.	Shipments of waste - Waste framework legislation - List of waste and hazardous waste	n/a
6.	Labour market-related legislation	Working Environment / Employment Relations: €3,879m**
7.	Data protection	n/a
8.	Working time	Working Environment / Employment Relations: €3,879m**
9.	Recording equipment in road transport (for driving and rest periods)	n/a

<sup>86</sup> Press release "Commission wants to simplify life for SMEs by easing the top 10 most burdensome EU laws", 07 March 2013. Available at: [http://europa.eu/rapid/press-release\\_IP-13-188\\_en.htm](http://europa.eu/rapid/press-release_IP-13-188_en.htm) [accessed 01 February 2016].

No.	Laws	Indicative quantification*
10.	Procedures for the award of public contracts (public works, supply and service contracts)	Public Procurement: €216bn** Potential savings of EUR 36.5-66.5 billion annually resulting from closure of remaining gaps in EU public procurement legislation***
11. (sic)	Modernised customs code	Taxation / Customs: €87,005m**

**Source:** \* Note that the categories used in the two sources of quantification can be matched to the list of most burdensome laws only approximately. \*\* High Level Group on Administrative Burdens (2014), see Table 8 below. \*\*\* Alleweldt et al. (2014), Table 3, p. 16-17.

However, the list is problematic as a guide to policy as the sample size is relatively small and the selection of burdensome laws consequently appears to reflect some sector specific concerns. It is also likely to be affected by factors like salience and survey participation, which are discussed in greater detail in Section 5. Finally, as discussed below, individual companies are not obviously able to judge the overall effect of regulation, which can be burdensome and at the same time facilitate market integration, thus achieving a net benefit.

Partially overlapping examples of regulatory barriers discussed in the 2015 Commission report on 'Single Market integration and competitiveness in the EU and its Member States' are:

- restrictive national regulations labour laws, including immigration legislation making it difficult to fill vacancies<sup>87</sup>; and
- quality marks, for example for construction products<sup>88</sup>.

However, the available evidence on regulatory barriers does not take into account the dual role of regulation, and specifically EU-level regulation discussed previously: EU-level regulation, including the measures characterised as burdensome in the top-10 consultation, typically reduces regulatory barriers to intra-EU trade by harmonising fragmented national regulation. National-level regulation, even if it successfully addresses market failures, can still cause regulatory failure from a Single Market perspective by maintaining or even exacerbating legal fragmentation. As discussed previously, additional analysis to distinguish adequate regulatory costs and unnecessary administrative burdens taking into account any single-market effects is essential.

#### 2.4.2. The High Level Group on Administrative Burdens final report (2014)

The European Commission also collected useful evidence on the direct cost of European legislation to business based on the Standard Cost Model (SCM)<sup>89</sup>. Looking at 13 priority areas and 72 related legal acts that are estimated to account for over 80% of administrative burdens created by European Union law in 2009<sup>90</sup>, the following assessment by the High Level Group on Administrative Burdens was published in 2014.

<sup>87</sup> European Commission (2015). P. 95.

<sup>88</sup> Ibid., p. 95.

<sup>89</sup> See [http://ec.europa.eu/smart-regulation/refit/admin\\_burden/scm\\_en.htm](http://ec.europa.eu/smart-regulation/refit/admin_burden/scm_en.htm) [accessed 16 January 2016].

<sup>90</sup> See a summary of these activities at [http://ec.europa.eu/smart-regulation/refit/admin\\_burden/priority\\_area\\_related\\_data\\_en.htm](http://ec.europa.eu/smart-regulation/refit/admin_burden/priority_area_related_data_en.htm) [accessed 16 January 2016].

**Table 8: Costs & burdens on business (Cutting Red Tape in Europe - Final Report, 2014)**

Priority area	Administrative burden (€m)	Reduction 'achieved' (% of administrative burden)
Taxation / Customs	87,005	-25.0%
Annual Accounts /Company Law	14,589	-45.0%
Agriculture / Agricultural Subsidies	5,290	-36.0%
Food Safety	4,073	1.9%
Working Environment / Employment Relations	3,879	-6.0%
Transport	3,862	-27.0%
Environment	1,181	-25.6%
Pharmaceutical Legislation	944	-39.0%
Financial Services	940	-15.0%
Cohesion Policy	929	-25.3%
Statistics	780	-42.0%
Public Procurement	216	-100.1%
Fisheries	74	-35.0%
<b>Total</b>	<b>123,761</b>	<b>-27.0%</b>

**Source:** High-level Group on Administrative Burdens (2014).

The cost of acquiring all the required information about local legislation and regulation was highlighted as a particular issue for SMEs by officials and stakeholders in a session on SMEs and the Single Market at the 2015 SME Annual Assembly held on November 17-19 2015 in Luxembourg. This is largely a fixed cost which proportionally can be burdensome for smaller firms and discourage them from selling into the Single Market.

An interesting aspect of the assessment made by the High-level Group on Administrative Burdens is the estimated 'achieved reduction' based on measures adopted at EU level. The 2014 recognises in a footnote that the "realized savings potential depends on the implementation in Member States", but even that is likely to be an overstatement of the 'achievement', given the considerable delay between the adoption of cost-saving measures at EU level and fruition in daily business practice. The issue of the cost of delay in measures to reduce barriers and costs for business is discussed in Section 3.

In addition, given the large numbers involved, it is surprising that efforts to identify the most costly regulations have not been made a permanent programme for identifying those regulations.

Moreover, concentrating only on direct costs to businesses reveals only one aspect of costs. Costs to the administration (including enforcement costs) and consumers are not included

in the assessment. Which costs are or are not included has potentially far reaching consequences in terms of the appropriate policy response.

An example of the complexities involved in the assessment can be found in the Commission Proposal for a Directive on a common framework for customs infringements and sanctions. The proposal envisages a system of strict liability for minor customs infringements (Article 3). While strict liability is likely to lead to savings for customs administrations in the short term (and the cost to businesses may not change compared with the present system), a system that makes compliance easier (ex-ante regulation supported by state-of-the-art ICT solutions) could reduce overall costs (and increase dynamic efficiency), but would require greater upfront investment and an element of burden-shifting from businesses to the administration.

A further source of costs that needs to be taken into account is non-compliance and the growth of the shadow economy<sup>91</sup>. The shadow economy distorts competition and slanting the playing field between competing businesses located in different Member States, thus impeding the Single Market.”

In addition, the shadow economy has a detrimental longer term impact: Higher taxes on legitimate business are required to sustain a given level of public spending. The reduction of the return on investment caused by higher taxes reduces investment in capital and innovation, or leads businesses to shift activities to other Member States or out of the EU.

#### 2.4.3. Best practice in Member States

A promising route to identifying best practice when it comes to minimising administrative costs for businesses is to look at the best-performing Member States in international comparison exercises like the World Bank ‘Ease of doing business’ index<sup>92</sup>: EU Member States account for 40% of the top twenty countries in terms of ease of doing business: four are in the top 10 (DK in third place behind Singapore and New Zealand, UK, SE, FI) and four more in the top 20 (DE, EE, IE, LT).

Harmonisation at the level of the best performing Member States appears to be a promising route to achieving real and sustainable cost savings and should be a priority for any Single Market strategy.

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<sup>91</sup> The size of the shadow economy in the EU was equal to 18.4% of GDP in 2012 .See London Economics (2013d).

<sup>92</sup> <http://data.worldbank.org/indicator/IC.BUS.EASE.XQ>

### 3. STOCKTAKING OF CURRENT INITIATIVES

#### KEY FINDINGS

1. The Single Market represents one of the key achievements of the European Union and positions the EU as a global player in the world economy. While many of the Single Market's benefits are already visible, further benefits will only materialise if remaining barriers are removed and administrative burdens reduced (in many cases to zero).
2. While policy initiatives are visible across all of the priority areas identified in the previous chapter are in evidence, the link between activities and outcomes is often vague. Too often, no clear timetable is given for when impacts on the Single Market can be expected once the first steps have been taken.
3. The 'cost of slow Europe' is the cumulative 'cost of non-Europe' accrued between the identification of the need for policy action and regulatory measures having an impact on businesses operating in the Single Market. Given often vague initiatives by the EC, the lengthy legislative process, and the common delays in transposition and implementation of Directives, the cost of slow Europe adds up to large multiples of the headline figures familiar from the cost of non-Europe reports.
4. Taking the Commission's activities under the Digital Single Market Strategy in the area of e-commerce as an example the cost of slow Europe is equal to the cost of non-Europe (€204m billion) x the average length of legislative process (3.6 years) from the year of first legislative proposal (2015) = €748 billion.
5. Other general initiatives (e.g. better regulation initiative with REFIT, application of scoreboards) aim at providing a solid basis for performance and evidence based smart regulation. However, in practice, deviations from evidence and performance based policy making are still far too common. Notably, ex ante and ex post impact assessment leave much to be desired, in particular in terms of what is assessed (often, the measures assessment differ from the measures that are enacted) and the use (and quality) of quantification. Equally, feedback mechanisms are both underdeveloped and underexploited. The ambition of a consolidated system for smart Single Market regulation remains unfulfilled.
6. VAT reporting obligations are among the most burdensome obligations on businesses. The current VAT system with potentially 28 different systems and 80 different VAT rates is one of the largest single barriers to the Single Market. The EP study on "Simplifying and Modernising VAT in the Digital Single Market for e-Commerce" in 2012 recommended an ambitious programme for the operation of the VAT system from 2015, but the implementation of substantive reforms is still outstanding. Greater ambition to reduce the cost of compliance, in particular for SMEs seems warranted. An ICT-enabled system of VAT in which administrative burdens are either

- reduced or shifted as far as possible to the tax administration should be the goal for a Single Market focused VAT system.
7. Public procurement going paperless has broadened access to tenders across borders. Though public contracts are now accessible for international bidders, still only 1.26% of contracts are awarded to foreign companies.<sup>93</sup>
  8. The Union Custom Code and Customs 2020 Programmes bring about long overdue reforms, especially in terms of acknowledging modern IT developments. However, its full implementation has been postponed from 2016 to 2020 due to many technical problems. The programme is advancing, but it is still way behind its initial schedule. The 3-year delay of IT implementation (in the best case scenario for MCC implementation in the 2012 EP study "Implementation of the Modernised Customs Code" has cost businesses over €260bn (3 years x €87bn). As with VAT, maximum exploitation of ICT in the implementation of customs reform, based on an ambitious goal for reducing administrative burdens (possibly to zero for certain vetted economic operators) should be the aim of the ongoing reform programme.
  9. Assessing the effects of ongoing initiatives has been difficult. This highlights the importance of putting more rigorous ex-post assessment in place in order to close the evidence-based policy cycle.

Table 9 gives an overview over current initiatives including their broad objectives and expected benefits. The table is ordered by magnitude of savings or growth potentials associated with the initiatives. More details on most of the initiatives are then elaborated in the following sections.

**Table 9: Stock taking of current initiatives - Overview**

Initiative	Objective	Expected benefits	Timeline
<b>General initiatives</b>			
<b>Single Market Strategy for Europe</b>	<b>Free movement</b> of goods, services, people and capital.	The Single Market is one of the EU's biggest assets. It enables the EU to be a global player and generates large business opportunities as well as potentials in increasing living standards across all Member States.	Benefits are already materialising but further benefits will only arise if additional barriers are actively removed.
<b>Digital Single Market Strategy</b>	Reinforces the Single Market strategy for digital environments. People and companies	Realize opportunities of a Single Market of 500 million people for businesses. <b>Economic growth</b>	Ongoing: 16 initiatives run until end of <b>2016</b> , but

<sup>93</sup> PwC, ICF GHK and Ecorys (2014). 'SMEs' access to public procurement markets and aggregation of demand in the EU'. Available at : [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/smes-access-and-aggregation-of-demand\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/smes-access-and-aggregation-of-demand_en.pdf) [Accessed 21 September 2015].

	should be able to <b>access markets and services, and enter competition online in seamless ways.</b>	associated with a fully integrated DSM estimated to be <b>€415 billion per year.</b>	includes vague and delayed actions.
<b>Electronic ID</b>	Unified system of online and offline identification. e-ID was designed to facilitate <b>identification, authorization, and authentication.</b>	e-ID is <b>not yet interoperable</b> across the EU.  If it were, <b>gains to GDP</b> are estimated to be around €15-20 billion in relation to public e-procurement and €0.5-1.5 billion in increased <b>consumer surplus.</b>	No concrete timeline.
<b>Better regulation initiative (incl. REFIT)</b>	<b>Evidence based policy making</b> through quantitative evidence and stakeholder consultations. <b>Reduce red tape.</b>  Simplify regulatory frameworks by simplifying legal texts, cutting obsolete paragraphs, suspending obsolete regulations, and outdated proposals.	<b>Savings</b> due to reductions in red tape are estimated to <b>amount to €33.4 billion per year.</b> REFIT has suspended hundreds of pending proposals since 2012 and proposed 58 legislative initiatives to the Commission. The Administrative Burden Reduction (ABR) Programme breaks down savings by initiative. <sup>94</sup>	Ongoing. Benefits have been realised and are growing, although implementation of Smart Single Market regulation principles is still patchy (IAs).
<b>Internal market governance and information tools:</b>  <b>Single Market Scoreboard (SMS)<sup>95</sup></b>	<b>Monitoring</b> systems must be put in place to allow for <b>assessments and feedback</b> along the policy cycle.  SMS aims to give an overview of the <b>practical management</b> of the Single Market. It uses <b>traffic light indicators</b> about timely and correct transposition of EU	Set <b>incentives to monitor progress</b> of EU legislation. Policy assessments will be planned for at every stage of the policy cycle. Effectively indicate best practices for replication and problems for amendments.	Being rolled out. Benefits will materialise during evaluation phases of new policies (usually 3-5 years after implementation). Significant potential for further benefits through responsive, 2-way monitoring

<sup>94</sup> European Commission (2015) 'Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook', SWD(2015) 110 final.

<sup>95</sup> London Economics for the European Parliament (2015) 'Smart Single Market Regulation'.

	legislation.		tools.
<b>Sector specific initiatives</b>			
<b>VAT reform</b>	Reduce complexity through a standardized VAT application. Enhance intra-EU trade, cut red tape, close VAT gap. <sup>96</sup>	The estimated <b>savings on administrative burden are €15 billion per year.</b> Reducing complexity of the current VAT system may yield a <b>3.7% increase in intro-EU trade and increase GDP and consumption</b> by 0.3% and 0.4% respectively. The reform is ongoing.	Ongoing. Benefits of unified VAT declaration would rapidly materialise following transposition. Further alignment of ICT implementation outstanding.
<b>e-government</b>	Make services of public administrations accessible online and across borders. Develop interoperable solutions for the interaction of public administrations, citizens and businesses.		Ongoing, but mostly in pilot stage. Benefits will start to materialise with the introduction of interoperable solutions which are still being developed.
<b>E-Procurement</b>	(1) To make procurement <b>simpler</b> and more <b>efficient</b> for public purchasers and companies.  (2) To provide the best <b>value for money for public purchases</b> , while respecting the principles of <b>transparency</b> and <b>competition</b> .	Procurement <b>process times</b> are expected to be <b>shortened</b> . Competition should be enhanced leading to <b>lower prices</b> and <b>increased quality</b> of public contracts. Estimates for <b>savings</b> in procurement costs of public institutions range between 10-18%. Member state estimates range between 29% and 58% of <b>cost reductions</b> for businesses. <sup>97</sup>	E-submission should be made mandatory for all contracting authorities and all procurement procedures by <b>October 2018</b> (two years after the expected transposition of the revised Directive).
<b>Customs code (CC) reform</b>	Modernise custom code making extensive use of IT innovation. Achieve fully paperless	Annual savings of €2.5 billion in compliance costs and €50 billion are estimated to be gained through enhanced	Ongoing but transposition has been postponed to <b>2020</b> . Technical

<sup>96</sup> European Parliament (2012a) 'Simplifying and Modernising VAT in the Digital Single Market for e-Commerce'.

<sup>97</sup> SWD(2015) 110 final

	customs procedures across the EU.	international business opportunities if e-customs were fully implemented. The modernisation of the CC is in progress within the Customs 2020 programme.	solutions must evolve to reap benefits.
<b>Online dispute resolution</b>	Increase consumer protection through increased access to justice in an affordable way ideally circumventing courts. Increase trust in online services to further integrate the Digital Single Market.	Substantial savings in the cost of the court system (by substituting physical presence in courts by online service). <sup>98</sup> Enhanced trade in the Digital Single Market, especially in online cross-border trade. Reduction in consumer detriment amounting to €0.5 - 1 billion per year. <sup>99</sup> No formal assessments exist. The service will not be operable before 2016.	An EU-wide platform is expected to be operable in <b>2016</b> .
<b>REACH</b>	REACH regulates the chemical industry in the EU in order to manage the risks posed to human beings and the environment through chemicals. In the long term it should foster the sector's competitiveness.	Higher substance <b>safety standards</b> are expected along with decreased use of hazardous materials due to higher exploitation of substitutes. Increased competitiveness especially of large companies that benefit from selling their registration data. No formal assessments exist yet, the reform is being rolled out.	Ongoing. Further amendments to the policy expected. Benefits to large companies are materialising, SMEs are still losing.
<b>Business registers</b>	Harmonize business registers across member states for consistent compilation of the statistics required to provide indicators of both short-term and structural economic developments. <sup>100</sup>	<b>Annual savings of more than €69 million</b> could be achieved through facilitated cross-border electronic access to business information. <sup>101</sup> Transposition is still in progress.	Ongoing. Data structures are being harmonised across registers. See EC (2012) MEMO/11/115 and recent Directives <sup>102</sup> .

<sup>98</sup> Civil Justice Council (2015) 'Online Dispute Resolution for Low Value Civil Claims'.

<sup>99</sup> European Commission (2011) SEC(2011) 1409 final.

<sup>100</sup> Eurostat for the European Commission (2010) 'Business Registers – Recommendations Manual'

<sup>101</sup> European Commission (2011) 'Interconnection of business registers: frequently asked questions'.

			New e-Government Action Plan including an initiative on the 'Once-Only' principle and an initiative on building up the interconnection of business registers to be in place by <b>2016</b> .
<b>SOLVIT</b>	Enhance problem solving relating to issues application of EU laws and regulations between two member states for individuals and businesses.	Enhanced business and worker mobility across the EU for example through facilitation in recognition of professional degrees, and work permits. SOLVIT centres are established in every member state. Formal assessments of the service and its interconnectedness with judiciary services in the member states do not exist.	Complete. Amendments to the service could yield additional benefits.

### 3.1. From actions to impact: the cost of slow Europe

As the table above shows, the European Commission is undertaking activities across the priority areas. However, the link between concrete activities and outcomes is often vague. In particular, no clear timetable is given for when impacts on the Single Market can be expected once the first steps have been taken. The problem starts with the lengthy legislative process in the EU.

**Table 10: Average length of the EU legislative process**

Stage of legislative process	1999-2004 (average)	2004-2009 (average)	2004-2009 (shortest/longest)
First reading	14 months	15 months	2 months/48 months
Second reading	25 months	31 months	12 months/108 months
Conciliation	32 months	44 months	29 months/159 months

<sup>102</sup> The interconnection of business registers : Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers Text with EEA relevance.

Source: EY (2011)

The average duration of the EU legislative process, that is, the minimum length of time between an initial policy action at the EU level and the earliest date on which real impact can be expected is 44 months. Moreover, the length of the legislative process is increasing over successive periods.

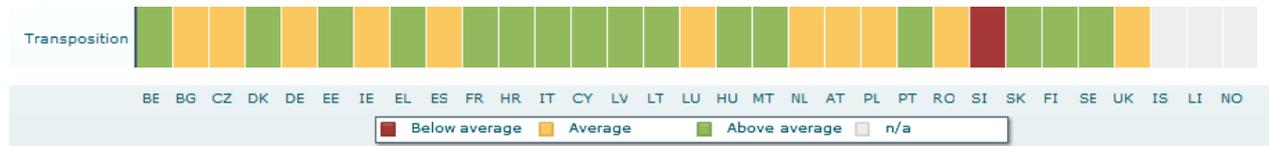
This means that ‘actions’ that consists of legislative proposals will take on average 3.6 years to have any impact on the Single Market. The time it takes for less concrete actions such as ‘reviews’, ‘action plans’ etc. to have an impact is essentially uncertain.

### 3.1.1. Further post-adoption issues

The implementation of existing Directives represents a special challenge that needs to be addressed in order to ensure EU regulation meets its objectives in terms of market integration.

Most transposition efforts are related to the regulation of the internal market<sup>103</sup>. Frictions arising from the transposition process are well documented. While the Single Market observatory documents the progress that has been made (see Figure below), observers such as Börzel et al. (2010)<sup>104</sup> and Mariniello et al. (2015)<sup>105</sup> argue that ‘over-complication’ in transposition, in the sense of implementation that goes beyond the requirement of a Directive, often imposes unnecessary costs on economic operators. More fundamentally, differences in the speed of transposition and the exact implementation at the national level create legal uncertainty for businesses.

**Figure 17: Transposition by member state (Single Market Scoreboard)**



Source: Single Market Scoreboard

Extended non-compliance with EU law by member states is untenable and detrimental to the Single Market<sup>106</sup>. The process intended to ensure the compliance of member states is slow. The length of time passing between an initial complaint and the application to the Court of Justice with a request for daily penalties under Article 260(3) TFEU leads to “some member states benefiting from an undue prolongation of the transposition deadline set by the legislator equally for all member states”<sup>107</sup>. Expediting the enforcement process is a priority.

Three further issues deserve increased attention: the first is the issue of ‘gold plating’, the tendency of national governments to load transposed EU Directives with additional rules that add to the burden for business<sup>108</sup>. This is detrimental by – often unnecessarily –

<sup>103</sup> König and Luetgert (2008).

<sup>104</sup> Börzel, T.A., Hofman, T., Panke, D. and Sprungk, C. (2010). ‘Obstinate and inefficient. Why member states do not comply with European law’. *Comparative Political Studies*, 43, 11.

<sup>105</sup> Mariniello, M., Sapir, A. and Terzi, A. (2015). ‘The long road towards the European Single Market’. *Bruegel Working Paper* 2015/01.

<sup>106</sup> See Falkner (2013) on the wider detrimental impact on the credibility of the EU.

<sup>107</sup> Monitoring the application of Union law 2014 Annual Report. COM(2015) 329 final. SWD(2015) 133 final, p. 20.

<sup>108</sup> A 2013 report by the UK Institute of Directors (IoD) lists examples of gold-plating of EU employment Directives (e.g. Directive 91/533 on information on individual employment conditions; Directive 98/59 on collective redundancies; Directive 2006/54 on equal opportunities and equal treatment of men and women; etc.); the European Parliament published a study (Bocci et al., 2014) on gold-plating in the European Agricultural Fund for Rural Development related above all to eligibility and agri-environmental commitments, but also to payment issues, controls and procurement rules.

raising business cost, while also posing a more profound threat to the Single Market by undermining the integrity of European rulemaking. Comprehensive monitoring of this issue is a necessary first step to address the problem.

Secondly, a lack of enforcement of rules that are correctly transposed or enforcement which varies in intensity across the EU causes the same harm as slow transposition. *Inconsistent* enforcement, i.e. unequal application of the same rules in different member states has the potential to create new barriers. A less predictable enforcement regime, for example, may create greater costs for business than a non-harmonised legal framework. Such frictions are more difficult to detect and also more difficult to address at the European level. Again, monitoring and recording enforcement

Thirdly, Directives which offer a range of options to Member States result in additional information gathering and analysis costs as businesses which trade cross-border will have to familiarise themselves with the precise terms of the Directive in each of the Member States in which they wish to sell or be active. This is not likely to be a major issue for larger companies but for SMEs, especially the smaller ones, this may represent an important cost of businesses trading cross-border.

The initiatives underway should be judged in the light of the delays that have so far been characteristic of EU policymaking. However, while timelier implementation is a high priority and eminently desirable, more *ambitious legislation* is also called for: the focus should be on initiatives that bring tangible benefits (i.e. cost reductions) for businesses and citizens, while also addressing the most substantive barriers to market integration. Substantive legislative initiatives thus cannot be split from their implementing frameworks (often: the ICT systems that are required to realise the full benefits of a policy measure). Finally, the importance of unambiguous, ambitious and realistic timetables – where the time horizon is the date from which benefits are realised by European businesses and consumers – cannot be overstated. The following sections review the key initiatives currently being undertaken.

## 3.2. General initiatives

### 3.2.1. Single Market Strategy

#### a. Objectives

The Single Market Strategy aims at reducing barriers to **the free movement of goods, services, people, and capital**. In particular it promotes unified rules and conditions for physical and virtual trade. Customers should not face diverging prices, sales conditions, or delivery options, unless such practices are justified by objective and verifiable reasons.<sup>109</sup>

In addition, many initiatives specifically target the integration of the Single Market for SMEs. SMEs still fear high levels of complexity when deciding whether to operate across borders. Therefore they represent much unlocked potential for trade and job creation within the Single Market.

Modernising regulation of professions has a high priority on the Single Market agenda. Currently, many professions (as much as 33% of the total labour force) are regulated. Such regulations may negatively impact competition, prices as well as labour mobility across borders.

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<sup>109</sup> European Commission (2015) 'A Single Market Strategy for Europe - Analysis and Evidence', SWD(2015) 202.

## **b. Instruments**

Areas of action are divided into three categories:

- creating opportunities for consumers and businesses,
- encouraging modernisation and innovation, and
- ensuring practical delivery.

The creation of opportunities is especially focused on unlocking hidden potentials in established markets and industries (e.g. integrating the Single Market for construction, SME regulations), as well as in emerging markets (e.g. deregulating start-ups, legal frameworks for the collaborative economy).

Modernisation and innovation will come from the extension of standards across the EU, harmonization of Intellectual Property Rights enforcements, and more efficient EU-wide public procurement. Standards and certification promote economic growth due to the distribution of knowledge, trust and enhanced interoperability. Currently, the impact of standards is estimated to account for 0.8% of GDP in France, 0.3% in the UK, and 0.9% in Germany.

The third and last category deals with issues of compliance and enforcement of policies across Member States, as well as with the strengthening of the Single Market for goods. Enforcement frameworks will need to ensure that legislations are timely and correctly transposed.

## **c. Expected benefits**

During the financial crisis investment levels dropped from 23.5% to under 22% of GDP, thus amounting to an accumulated loss in investments of over €1.2 trillion between the years of 2009-2014.<sup>110</sup> The Competitiveness Report by the European Commission identified barriers to the Single Market as a key barrier to investments which hamper GDP growth as well as growth in productivity levels.

The Single Market for goods represents 25% of EU GDP and 75% of intra-EU trade (amounting to a value of €2,900 billion in 2014). Costs of compliance with product standards across different Member States are still high and could be substantially reduced. The total estimated annual costs of compliance for eight harmonised product areas (electric motors, laptops, domestic refrigerators/freezers, lifts, gardening equipment, petrol pumps, air conditioners and integrated circuits) amount to €342 million. The following table gives an overview over the nature of compliance costs:

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<sup>110</sup> European Commission (2015) 'Single Market Integration and Competitiveness in the EU and its Member States'.

**Table 11: Administrative and substantive compliance costs**

Type of cost	One-off costs	Recurring costs
<b>Administrative costs</b>	<p>Familiarisation with Single Market legislation and standards</p> <p>Notified Bodies fees for Single Market legislation and mandatory testing</p>	<p>Development and updating of technical files</p> <p>Production of a Declaration of conformity and CE marking</p> <p>Conformity assessment: preparation of technical files in parallel with testing activities</p>
<b>Substantive compliance costs</b>	<p>Modifications to product design (during new product development phase/ R&amp;D)</p> <p>Modifications to product design once products have been placed on the market</p> <p>Costs of temporarily or permanently withdrawing products from the market</p>	<p>Conformity assessment: preparation of technical files in parallel with testing activities testing for conformity with the applicable modules defined in Internal Market legislation</p>

**Source:** CSES taken from SWD(2015) 202 final.

Regarding the relatively new sector of collaborative consumption (e.g. peer-to-peer finance, online staffing, peer-to-peer accommodation, car sharing and video streaming) could grow from currently €13 billion to €300 billion by 2025. Rules and regulations must reflect such new trends, encourage its growth but ensure that the tax compliance and legal frameworks are fit for purpose.

The deregulation of the craftsmanship system in Germany has already doubled the number of new entries to the market while keeping the number of exiting self-employed craftsmen low.

#### d. Stakeholder views

The EC's Competitiveness Report states that considerable efforts are necessary to bring about structural changes to remove subsisting barriers to the Single Market. Good improvements are being seen for example in public procurement. However, the variance in modernisation and compliance is large across Member States. Especially more need to be done to create incentives for SMEs to participate in procurement.<sup>111</sup>

In a consultation, the vast majority of economic operators (87%) reported their competitive situation as being negatively affected by the current situation with respect to costs of compliance. A significant share companies quantified their perceived losses in annual turnover to amount to around 20%.<sup>112</sup>

<sup>111</sup> European Commission (2015) 'Single Market Integration and Competitiveness in the EU and its Member States'.

<sup>112</sup> European Commission (2015) 'A Single Market Strategy for Europe - Analysis and Evidence', SWD(2015) 202.

## e. Conclusions

The Single Market represents one of the key achievements of the European Union. As a single economic market, the EU ranges among the largest world economies. While many of the Single Market's benefits are already visible, further benefits will only materialise if subsisting barriers are removed.<sup>113</sup> Otherwise, the economy is likely to face periods of stagnation especially during unfavourable states of the world economy.

### 3.2.2. Digital Single Market

#### a. Objectives

The Digital Single Market strategy was adopted on 6 May 2015. Its objective is to reinforce certain aspects of the Single Market with regards to its integration via digital channels. In the integrated market, people and businesses alike should be able to **access markets and competition via the internet** in seamless ways.<sup>114</sup>

#### b. Instruments

The Digital Single Market Strategy defines **16 initiatives** which are to be delivered by the end 2016; the initiatives can broadly be categorized into three groups:

- Better access for consumers and businesses to digital goods and services across Europe,
- Creating the right conditions for digital networks and services to flourish, and
- Maximising the growth potential of the Digital Economy.

The reduction in legal complexities seems to be particularly important to further integrating the DSM. Current rules for cross border trade are too complex. Businesses may face up to 28 individual consumer protection and contract laws, as well as numerous facets of copyrights. Such complexities let only around 7% of business to operate across borders.<sup>115</sup>

**Barriers to VAT compliance** are currently already being **reduced in the DSM**. Since 1 January 2015 suppliers of digital services are able to make a single payment of VAT in respect of the payments they owe across the EU using a single tax return. This new procedure is known as the **mini one stop shop (MOSS)** and significantly reduces complexities in the DSM.

#### c. Expected benefits

The full integration of the Digital Single Market should create **substantive business opportunities**. The Single Market comprises over 500 million people who could be the customer base for any company operating across borders. Current estimates of additional **GDP growth** due to a fully integrated DSM amount to **€415 billion per year**.

<sup>113</sup> European Commission (2015) 'Single Market Integration and Competitiveness in the EU and its Member States'.

<sup>114</sup> European Commission (2015) 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. - A Digital Single Market Strategy for Europe', Brussels 6 May 2015, COM(2015) 192 final.

<sup>115</sup> European Commission (2015) 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. - A Digital Single Market Strategy for Europe', Brussels 6 May 2015, COM(2015) 192 final.

Also, 57% of companies say that they would increase their international activities if rule for trade were simplified and unified.<sup>116</sup>

#### d. Stakeholder views

The Digital Single Market Strategy is **broadly welcomed** by citizens and industry. Currently, 74% of complaints to the European Consumer Centres Network regard issues of geo-blocking where individuals cannot access purchased contents online when abroad or domestically if purchased abroad.<sup>117</sup>

Nevertheless, there are **contradicting views on the precise execution of the DSM** especially with respect to the **liberalization and uniformity of copyrights** across the Union. There are especially contradicting views in who should be granted exceptions to uniform copyrights across the EU. The CEPS Task Force on 'Copyright in the EU Digital Single Market' brings together these various views from several stakeholder groups including among others the film and music industry.<sup>118</sup>

#### e. Conclusions

The European Added Value Unit report "Mapping the Cost of Non-Europe, 2014 -19" (3rd edition, April 2015) puts the benefit of an integrated Digital Single Market at €415 billion per year. Since the DSM Strategy is the latest incarnation of the Digital Agenda for Europe dating back to 2010, which was concerned with broadly the same issues<sup>119</sup>, the implied 'cost of slow Europe', i.e. the cumulative cost of non-Europe during the time elapsed since the strategy was first discussed, is very large.

Taking this figure at face value, a cost of up to €277 billion has been incurred since then, as the completion of the Digital Single Market has not been achieved in the meantime (even if steps in the right direction were undoubtedly taken, including the telecom package and the cyber security package).

In fact, the timetable set out in documents such as the "Roadmap for completing the Digital Single Market" (May 2015) and "Upgrading the Single Market" (October 2015) is still vague on the timing of eventual impacts.

Based on this, it can be estimated that the quantifiable cost of a lack of swift action to complete the Digital Single Market is likely to exceed €1.5 trillion over the next 5 years.

An illustrative calculation of the cost of slow Europe in the area of e-commerce is provided below.

**Cost of slow Europe = cost of non-Europe (€204m billion x average length of legislative process (3.6 years) from year of first legislative proposal (2015) = €748 billion**

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<sup>116</sup> European Commission (2015) 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. - A Digital Single Market Strategy for Europe', Brussels 6 May 2015, COM(2015) 192 final.

<sup>117</sup> European Commission (2015) 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. - A Digital Single Market Strategy for Europe', Brussels 6 May 2015, COM(2015) 192 final.

<sup>118</sup> Mazziotti, Giuseppe (2013), 'Copyright in the EU Digital Single Market – Report of the CEPS Digital Forum'.

<sup>119</sup> In fact, calls for completing the Digital Single Market were issued repeatedly by the European Parliament (Resolutions in 2012 and 2013) and the European Council, which in 2013 called for the completion of the Digital Single Market by 2015.

**Table 12: Cost of slow Europe for e-commerce: €748 billion**

Digital Single Market Strategy for Europe (May 2015)**	Upgrading the Single Market: more opportunities for people and business (October 2015)***	Timetable envisaged by strategy		
Legislative proposals for better cross-border contract rules for consumers and businesses		REVIEW	LEGISLATIVE PROPOSAL	SINGLE MARKET IMPACT
A wide ranging review to prepare legislative proposals to tackle unjustified Geo-blocking	Legislative proposals to prevent discrimination against consumers based on nationality or location	2015		20??
	Initiatives to modernise the intellectual property rights (IPR) framework, including a review of the EU IP enforcement framework	2015	2016	20??
Competition sector inquiry into e-commerce: online trade in goods + services	Final report of inquiry - 2017		2016/17	20??
Comprehensive analysis of the role of platforms in the market including illegal content on the Internet	Guidance on how EU law applies to collaborative economy business models	2015	2017	20??
Legislative proposals to reduce the administrative burden on businesses from different VAT regimes	Comprehensive simplification package for SMEs as part of the VAT Action Plan	2015	2016	20??
Review the Audiovisual Media Services Directive			2016	20??
Review of the Satellite and Cable Directive		2015/16		20??
Activity with foreseeable impact on the single market	Activity with uncertain impact on the single market			

**Source:** LE Europe based on \*"Mapping the Cost of Non-Europe, 2014 -19" (3rd edition, April 2015); \*\*\*"Roadmap for completing the Digital Single Market" (May 2015); and \*\*\*"Upgrading the Single Market" (October 2015).

Note that many of the actions envisaged by the Commission such as 'reviews', 'initiatives', 'inquiries' and 'analysis', while necessary for the design of appropriate regulatory action, do not directly lead to impactful regulation within a foreseeable timeframe. As Godlovitch et al. (2015) point out in their study on market dynamics and policy challenges with respect to OTT players, "the key 'milestones' listed in the DSM Strategy concern legislative initiatives and investigations to be conducted within the coming two years, and it thus far provides limited concrete details as regards the specific changes that will be made to achieve its goals or of the outcomes by which results can be measured – and by when".<sup>120</sup>

### 3.2.3. Better Regulation Initiative (incl. REFIT)

#### a. Objectives

Better regulation is about designing EU policies and laws so that they achieve their objectives at minimum cost.<sup>121</sup> To this end, the better regulation initiative requires thorough planning and regular evaluations of new policies as well as frequent stakeholder engagement. The initiative is well in line with evidence-based policy making.

REFIT is an initiative within the better regulation framework. It is the Regulatory Fitness and Performance Programme. It requires joint efforts by European Parliament, the European Council, the European Commission, member states and stakeholders in order to simplify regulatory framework and reduce associated costs.

The main objectives are to **reduce red tape**, **simplify** regulatory frameworks by simplifying legal texts, cutting obsolete paragraphs as well as suspending whole obsolete regulations, and outdated proposals.

<sup>120</sup> Godlovitch et al. (2015), p. 107.

<sup>121</sup> [http://ec.europa.eu/smart-regulation/index\\_en.htm](http://ec.europa.eu/smart-regulation/index_en.htm), [Accessed 23 November 2015].

## b. Instruments

The better regulation initiative promotes the use of qualitative and quantitative data throughout all stages on the policy cycle – from the planning of a new policy, to its design, implementation and transposition. Similarly, REFIT operates after the implementation of new laws, as well as at the proposal stage. All new laws and regulations need to be assessed with respect to their performance.

Changes to existing law<sup>122</sup>

- **codification:** changes made to one piece of legislation are combined into a single new act to reduce volume and complexity
- **repeal:** unnecessary and obsolete laws are removed
- **review/sunset clauses:** laws are reviewed or automatically removed after a given period, this may already happen at proposal state.
- **revision:** laws are modified to keep them up to date.

An online contact form was put in place where citizens may point policy makers to where to simplify legislation.

## c. Expected Benefits

The High Level Group on Administrative Burdens estimates that the European Parliament and Council have adopted measures of potential reductions in red tape which are worth around €33.4 billion per year.<sup>123</sup>

REFIT on the contrary is a more recent addition to the better regulation initiative and is an ongoing programme included in the annual EC Work Programmes.

According to the main EU website communicating about REFIT simplifications have already been achieved in the following areas:<sup>124</sup>

- Electronic VAT invoicing
- Accounting/financial reporting
- Chemicals legislation
- Patents
- Public procurement
- Road transport

## d. Stakeholder views

Especially small and medium enterprises see **over-regulation** as a main burden on their productivity and thus **welcome the better regulation initiative and REFIT**.<sup>125</sup> However, there is a risk that without effective coordination between the various institutions involved in the legislative process, an evaluation by REFIT standards may just add another layer of bureaucracy.

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<sup>122</sup> [http://ec.europa.eu/smart-regulation/refit/simplification/index\\_en.htm](http://ec.europa.eu/smart-regulation/refit/simplification/index_en.htm), [Accessed 11 September 2015].

<sup>123</sup> High Level Group on Administrative Burdens (2014) 'Cutting Red Tape in Europe – Legacy and Outlook'. [http://ec.europa.eu/smart-regulation/refit/index\\_en.htm](http://ec.europa.eu/smart-regulation/refit/index_en.htm), [Accessed 11 September 2015].

<sup>125</sup> <http://www.eurocommerce.eu/media/85047/EuroCommerce%20briefing%20REFIT.pdf>, [Accessed 15 September 2015].

## e. Conclusions

Better regulation is a key promoter of evidence and performance based policy making. Programme and policy evaluations according to its fitness programme REFIT can be effective. The programme has the potential to cut red tape, to avoid duplication of agendas and to simplify procedures – all of which is much needed in the inertia-prone European policy making. Nevertheless, to avoid adding complexity in order to reach simplification, REFIT itself needs to undergo critical assessment according to its own criteria.

However, in practice, deviations from evidence and performance based policy making are still far too common. Notably, ex ante and ex post impact assessment leave much to be desired, in particular in terms of what is assessed (often, the measures assessment differ from the measures that are enacted) and the use (and quality) of quantification. Equally, feedback mechanisms are both underdeveloped and underexploited. The ambition of a consolidated system for smart Single Market regulation remains unfulfilled<sup>126</sup>.

### 3.3. Initiatives by sector

The next sections discuss initiatives in different sectors where the order of presentation follows the rankings of the 10 most burdensome EU laws<sup>127</sup> or the magnitude of its expected benefits whenever applicable.

#### 3.3.1. VAT reform

##### a. Objectives

Differences in VAT treatment of domestic and intra-EU transactions inhibit the proper functioning of the Single Market by discouraging businesses from expanding their activities to other member states. This implies that, under the current VAT system, traders and consumers are not benefitting from the full advantages of a real Single Market. Thus, there are two main objectives of the VAT reform: (1) to **reduce obstacles to cross border trade** and (2) to **reduce burdens on domestic businesses** in order to support **growth and competitiveness**.

The Value Added Tax (VAT) system in the EU is governed by a **common legal framework** – the VAT Directive<sup>128</sup> (as last amended by Directive 2009/47/EC and 2010/45/EU). There is **a minimum standard VAT rate of 15%**, above which member states are free to set their own national VAT rates. Given that EU law only requires that the standard VAT rate must be at least 15% and the reduced rate at least 5% (for supplies of goods and services referred to in an exhaustive list), **actual rates applied vary between member states** and between certain types of products.

The main difficulty businesses face in completing VAT returns in different member states is the **complexity in national VAT declarations and different language regimes**. This complexity in turn leads to the following main problems: **it restricts cross-border trade**, **it reduces the accuracy and timeliness of VAT declarations**, and it increases the **burden of doing business across borders**. This can be particularly true for e-commerce and the supply of goods in the internal market, where the customer is a private individual and the supplier needs to register, declare and pay the VAT in the member state of the customer.

There are an estimated 29.8 million businesses completing VAT returns in the EU. About 3.8 million of these submit VAT returns in more than one member state, which **costs**

<sup>126</sup> See London Economics (2015) for suggestions on an 'enhanced performance-based policy cycle'.

<sup>127</sup> [http://europa.eu/rapid/press-release\\_IP-13-188\\_en.htm](http://europa.eu/rapid/press-release_IP-13-188_en.htm), [Accessed 4 November 2015].

<sup>128</sup> Directive [2006/112/EC](#)

**around 2 to 3 times more** than the € 4 billion equivalent of submitting domestic VAT returns<sup>129</sup>.

For SMEs, when doing business cross-border, the problem is magnified for two clear reasons. First, there is less financial capacity to set up local companies with local staff to submit VAT returns in another member state. And second, there is less financial capacity to hire specialised staff or pay outside consultants with knowledge of foreign rules and languages necessary to complete a VAT return in another member state. The result is that **SMEs bear a disproportionate regulatory burden**, which acts as a barrier to cross-border trade.

To address these problems the European Commission has put forward a proposal for a **standard VAT declaration** amending the VAT Directive<sup>130</sup>.

The specific aims of a standard VAT declaration are to:

- Make VAT system simpler and more transparent, relieving businesses of considerable administrative burdens and encouraging greater cross-border trade.
- Make VAT more efficient in supporting member states' fiscal consolidation efforts and sustainable economic growth.
- Broadening tax bases and limiting the use of reduced rates could generate new revenue for member states without the need for rate increases.
- The standard VAT rate could even be reduced in some member states, without any impact on revenue, if exemptions and reductions were removed.
- Stop large revenue losses that occur today due to uncollected VAT and fraud.

## **b. Instruments**

In December 2011, the Commission launched an **ambitious reform** of the EU VAT system. Among the core objectives of this Strategy were to make the VAT system more robust and **fraud-proof**, and to **simplify VAT** so as both to facilitate greater compliance and ease the lives of businesses **across the EU**.

Since this Strategy was launched, important progress has been made towards these objectives. In terms of better fighting VAT fraud, an important proposal which has already been adopted is the **Quick Reaction Mechanism**. This initiative will allow member states to swiftly and effectively respond to new cases of massive fraud. Since 2010, Eurofisc has also been functioning as a very effective network to enable member states to exchange information and intelligence on VAT fraud. The Fiscalis programme and the Commission also support member states in the exchange of best practices in various forums, and encourage national authorities to engage in **joint audits** where this could add value.

In terms of simplifying the VAT system, at the beginning of 2013 important new legislation entered into force to **encourage e-invoicing and ease administrative burdens for small businesses**. In January 2015, a one-stop-shop came into effect for businesses supplying e-services or telecom services, to ease compliance for those operators.

Finally, the Commission has **proposed a standard VAT declaration form** which should greatly simplify the process of VAT returns for cross-border businesses in the EU.

The idea behind a standard VAT declaration is to allow all businesses to provide **standardised information** to each member state submitted in a common, preferably

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<sup>129</sup> European Commission, SWD (2013) 427 final (Impact Assessment of the VAT Reform), Brussels, 23.10.2013.

<sup>130</sup> European Commission (2013) 'Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC on the common system of value added tax as regards a standard VAT return', COM(2013) 721 final.

**electronic format.** In this way a business submitting a VAT return in one member state can easily complete and submit a VAT return in another member state because the information and submission is standardised.

The standard VAT declaration should be available to all businesses because to limit it to certain categories of businesses would only serve to reduce its scope, increase complexities and thereby lower burden reduction. Equally to lower costs and complexities for member states only one VAT return should be offered at the level of the EU, the standard VAT declaration.

### c. Expected benefits

When measuring reporting obligations in the context of the Commission's Action Programme for Reducing Administrative Burdens in the European Union, **VAT related burdens ranked at the top with € 69 billion** classified as administrative burdens. VAT returns in the EU were estimated at € 19 billion.

Compliance costs are estimated to amount to a total of € 88 billion of total compliance cost, of which perhaps € 67 billion are related to the system's complexity and differences between member states.<sup>131</sup> The "Retrospective evaluation of the elements of the VAT system" estimates that a **reduction of 10% in the dissimilarity** of the general VAT administrative procedures between countries could yield **a rise of 3.7% in intra-EU trade**, while real GDP and consumption would increase by 0.4% and 0.3%, respectively. Thus, a standardised VAT return could have **real positive effects** on the EU economy.

The Commission's proposal for a standard VAT declaration form is accompanied by an Impact Assessment<sup>132</sup>. Of the options evaluated in detail the preferred option is for a standard VAT return, mandatory for member states and for business, which provides a list of standardised information of which only a small number of items are required in all cases. This maximises the burden reduction for businesses while limiting the cost for member states. The preferred option is estimated **to reduce administrative burdens by a maximum of €15 billion per annum**. For the industry it has been assessed that a common VAT system could deliver cost savings between 30% and 35%.<sup>133</sup>

As well, as much as 12 per cent of total VAT due is not actually paid, equivalent to a revenue loss of EUR 119 billion in 2009.

Moreover, **non-taxation** of intra-EU transactions is a source of fraud and represents a **major cost to member states** through lost tax revenue. In 2009, the Commission published a study which sets out to quantify and analyse the VAT gap for each member state (based on a comparison of national VAT receipts with a theoretical net VAT liability for the national economy as a whole). The study estimates the **gap at €106.7 billion in 2006** within the EU-25 (excluding Cyprus). This represents an average of 12% of the net theoretical liability, although several member states are above 20%. Given the current fragile economic and financial climate, a reduction of VAT fraud could provide governments with the **additional tax revenues** that they need without the need to further increase the tax burden on consumers.

### d. Stakeholder views

There is a general feeling amongst stakeholders that the **fragmentation** of the common EU VAT system into 28 national VAT systems is **the main obstacle to efficient intra-EU trade** and thus prevents citizens from reaping the benefits of a genuine Single Market.

<sup>131</sup> European Parliament (2012) 'Simplifying and Modernising VAT in the Digital Single Market for e-Commerce'.

<sup>132</sup> European Commission (2013) SWD(2013)427 final

<sup>133</sup> European Commission (2015), SWD(2015) 110 final

Internationally active businesses consider that the price they actually pay for this lack of harmonisation comes in the form of **complexity, extra compliance costs and legal uncertainty**. SMEs do not always have the necessary resources to deal with this and therefore refrain from engaging in cross-border activities.

These shortcomings have an impact on commercial behaviour which may prevent the most effective business decisions from being taken. When tax rules influence the decision on where to buy or sell goods and services, the economic neutrality of VAT is no longer guaranteed and the **functioning of the Single Market is severely undermined**.

Several contributors pointed out that, as a result, doing business with non-EU partners is becoming ever easier and more profitable than doing business with EU firms. Stakeholders currently benefiting from exemptions, derogations or reduced rates are generally in favour of maintaining them; others even want to extend this preferential treatment to include their own activity.

On the whole, the Green Paper has generated great expectations for change. At the same time, there is general acknowledgement that a fundamental overhaul of VAT will inevitably be a long-term project. **Member states** are understandably **unwilling to take any risks** that are triggered by reform efforts and could **threaten VAT revenues**. They seem therefore to be only prepared to consider **gradual changes**, for which the risks, benefits and costs are clear, well understood and fully assessed.

#### e. Conclusions

VAT reporting obligations are among the most burdensome obligations on businesses, in particular the obligations relating to VAT bookkeeping, to the submission of periodical VAT returns and to the issuing of VAT-compliant invoices<sup>134</sup>.

There are **potentials for further cost reductions** relating to VAT.

The European Commission's 'EU Administrative Burden programme' found that VAT accounts for 62.7% of the total cost across the areas investigated by the programme (See Table 8, p. 59). A **harmonization of tax rates and filing of taxes** across the EU member states should stand at the top of the policymakers' priority lists. Such harmonization and simplification is likely to **enhance tax incomes by closing the tax gap**, while yielding **large savings** in compliance costs for businesses.

In December 2011, the Commission launched an ambitious reform of the EU VAT system (Communication on the future of VAT). The Commission's proposal for a standard VAT declaration form is accompanied by an Impact Assessment. Of the options evaluated in detail the preferred option is for a standard VAT return, mandatory for Member States and for business, which provides a list of standardised information of which only a small number of items are required in all cases. This maximises the burden reduction for businesses while limiting the cost for Member States. The preferred option is estimated to reduce administrative burdens by a maximum of €15 billion per year.

The EP study on "Simplifying and Modernising VAT in the Digital Single Market for e-Commerce" in 2012 recommended an ambitious programme for the operation of the VAT system from 2015, but the implementation of substantive reforms is still outstanding.

In particular, greater ambition to reduce the cost of compliance, in particular for SMEs seems warranted. An ICT-enabled system of VAT in which administrative burdens are either reduced or shifted as far as possible to the tax administration should be the goal for a Single Market focused VAT system.

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<sup>134</sup> European Parliament (2012a)

### 3.3.2. E-procurement

#### a. Objectives

E-procurement (electronic public procurement) refers to the use of **electronic communication and transaction processing by government institutions** and other public sector organisations when buying supplies and services or tendering for public works.

The EU's public procurement market is estimated to have been **worth in excess of €2 trillion** (or just under 20% of the EU's GDP) in 2010. Thus, public procurement is one of the major items of expenditure for member states and an important element of the European Single Market.

Economic, social and political developments and current budgetary constraints have made it necessary to reform the rules which date back to 2004. The main objectives of the 2014 EU Procurement Directives are two: (1) to **make procurement simpler and more efficient** for public purchasers and companies; and (2) to provide the **best value for money for public purchases**, while respecting the principles of **transparency and competition**.

In the current context of fiscal constraints, public authorities face a choice between reducing the level of services they provide to citizens and delivering these services more efficiently. E-procurement can **significantly simplify** the way procurement is conducted, **reduce waste** and **deliver better procurement outcomes** (lower price, better quality) by stimulating greater competition across the Single Market. It can thereby contribute to delivering services more efficiently without introducing more cuts to government outputs to serve citizens.

Contracting authorities and entities that have already made the transition to e-procurement commonly report **savings of between 5 and 20% of their procurement expenditure**. Given the size of the total procurement market in the EU, each 5% saved could return around €100 billion to the public purse.

#### b. Instruments

The 2014 EU Procurement Directives came into force at EU level on 17 April 2014. EU member states now have 2 years to implement them in national legislation. They include:

- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

The 2014 EU Procurement Directives simplify public procurement procedures and make them more flexible, which will benefit both public purchasers and businesses, particularly SMEs:

- public purchasers will be better able to negotiate the terms of contracts with companies to obtain the service that best suits their needs;
- minimum deadlines for procedures will be shorter;

- regional and local authorities will benefit from reduced publicity obligations and may set procedural deadlines (e.g. tendering bids), by mutual agreement with the participating companies;
- only the winning company needs to submit all the documentation proving that it qualifies for the contract in question. For a company to participate in the procedure, it will be sufficient to submit a self-declaration that it fulfils these conditions, drastically reducing the volume of documents required for selecting companies.
- to further reduce the paperwork involved in public procurement, public procurement contracts will eventually have to be sent online rather than by post.

### c. Expected benefits

There is a growing body of evidence that e-procurement can simplify the procurement process, shorten the duration of contracts and **reduce the processing costs** for contracting authorities. Moreover, the increased **transparency** and easier **access** to tender opportunities provided by e-procurement delivers higher participation in tenders, which leads to **greater competition, lower prices** and **better outcomes**.

Examples of the cost savings already produced by the introduction of e-procurement:

- Following the introduction of e-procurement, Portuguese hospitals were able to achieve price reductions of 18% on their procurement contracts. In aggregate, the switch-over to e-procurement in Portugal is estimated to have generated savings of about €650 million in the first year.
- XchangeWales – the Welsh e-procurement programme - delivered benefits of £58 million (December 2011), three years after it was launched.
- UGAP (Union des groupements d'achats publics) – the French central purchasing body – estimates that the progressive switch to e-procurement reduced the administrative burden for buyers by 10% (e.g. through faster analysis of bids and easy access to documents) and by another 10% for the legal services involved (as less legal control was required when e-procurement is used).

Other benefits of the new rules are the following:

- Public procurement procedures can be used by public purchasers to implement environmental policies, as well as those governing social integration and innovation.
- European SMEs, with their significant potential for job creation, growth and innovation, will have better access to public procurement markets.
- Stronger measures are in place to prevent conflicts of interest, favouritism and corruption.
- Social, cultural and health services and certain others, such as legal, hospitality, catering and canteen services listed in the Directives, will benefit from the new simplified arrangements:

### d. Stakeholder views

The UK government welcomes e-procurement but remains wary about how many topics the reform is trying to cover. The overall goal of **simplification** shall not get out of sight.

The European Economic and Social Committee (ESSC) has been generally in favour of the reforms, especially with regards to increased **transparency** and **fraud reduction** in the procurement processes. Yet, lately, their voice is turning more negative because of **slow progress on the implementation of technical standards**. They say that this is “quite

inconsistent with the speed at which technical developments occur in a market where obsolescence is the norm"<sup>135</sup>.

One of the main objectives of the wider use of e-procurement is to open the market of public tenders to **SMEs**. However, in comparison to the period 2006-2008 the share of public contracts awarded to SMEs in the period 2009-2011 has remained constant and has by trend even decreased.

Many SMEs, for example in the building industry<sup>136</sup>, seem to dislike the Pre-Qualifications questionnaires which are project, or industry specific long documents which need to be filled in separately at almost each application for a public project. SMEs complain about that this **administrative barrier to public contracts** compared to larger companies who have the potential of hiring experts who will only write public proposals. It has indeed been found that large companies respond to a much larger number of tenders than SMEs. But, positively, the rate of success seems to be independent of company size.<sup>137</sup>

## e. Conclusions

The plan of having a fully electronic procurement system by the time of writing this report has not been fulfilled. Current initiatives are very **broad but too slow** in their implementation. Many pre-assessment studies have been carried out, but **evidence** on the effects of e-procurement during and after implementation is extremely **scarce**.

### 3.3.3. Customs code reform

#### a. Objectives

Customs procedures impose an administrative burden of €87bn on European businesses. Adapting the EU's Customs Code to the requirements of an **electronic customs** environment has been a longstanding goal of the EU. The Community Customs Code is over 20 years old, and the world of commerce has changed significantly since its adoption in 1992. The use **of information technology (IT) by both customs and economic operators** and the complexity of supply chains have developed greatly. Legislation needs to reflect these changes so as to facilitate rather than obstruct cross-border trade. At its core stands the transition to fully **paperless customs**.

Because of **technical problems** in the **implementation** of the modernised customs code, the proposed implementation plans have been modified several times.<sup>138</sup>

The Modernised Customs Code (MCC) was adopted in in 2008. The reworked MCC has been adopted as the Union Customs Code (UCC - Regulation 952/2013), which will become applicable as of 1 May 2016, with the supporting IT infrastructure to be implemented only by 31 December 2020. The current initiative is the **Customs 2020** programme which is running from 2014-2020 extending and reinforcing the earlier Union Customs Code (UCC) objectives listed here below.

The specific objectives of the custom code modernisation are:

- implement e-Government in the area of customs;
- fulfil the commitment to the '**better regulation**' initiative in this area, by providing less complex and better structured rules and regrouping several Regulations;

<sup>135</sup> <http://www.eesc.europa.eu/?i=portal.en.int-opinions.28190>.

<sup>136</sup> Federation of Master Builders, (2013). 'Improving public procurement for construction SMEs'. [www.fmb.org.uk](http://www.fmb.org.uk)

<sup>137</sup> Thomassen et al. for the European Commission (2014) 'SMEs' access to public procurement markets and aggregation of demand in the EU'.

<sup>138</sup> European Parliament (2012) 'Implementation of the Modernised Customs Code'.

- enhance the **competitiveness** of companies doing business in and with the Community, thus creating **economic growth**;
- increase **security** and **safety** at the external border, once common standards are introduced and managed via a common IT framework;
- reduce the risk of **fraud**;
- contribute to **better coherence** with other Community policies, such as indirect taxation, agricultural, commercial, environmental, health and consumer protection policy;
- **decrease costs of compliance** through e-Customs programme; and
- ensure an **effective decision-making process** for the adoption of implementing provisions, guidelines and explanatory notes and provide for the Commission to request a national administration to withdraw a decision.

## b. Instruments

The UCC lays down the **general rules and procedures** applicable to goods brought into or taken out of the customs territory of the European Union. The UCC and its related acts are designed to modernise EU customs through the following measures:

- streamline customs legislation and procedures;
- offer greater legal certainty and uniformity to businesses;
- increase clarity for customs officials throughout the EU;
- simplify customs rules and procedures and facilitate more efficient customs transactions in line with modern-day needs;
- complete the shift by Customs to a paperless and fully electronic environment;
- reinforce swifter customs procedures for compliant and trustworthy economic operators (Authorised Economic Operators).

## c. Expected benefits

Although the UCC has been adopted in 2013 it will only be fully effective by May 2016, with some parts taking effect only by 2020. Hence, it has **not yet been formally assessed**. Nevertheless, some of its impact is foreseeable especially due to the long introduction period leading up the UCC's implementation.

The development of electronic customs (e-customs) is a prominent part of the customs code reform. E-customs have **massive cost saving potential** if businesses no longer need to file several customs forms but may use one centralized format to submit to any of the EU member states. **In 2013, over 90% of EU customs declarations were made electronically.**<sup>139</sup> Yet, the advances in IT development are still behind their potentials, leaving an approximate €2.5 billion of potential annual savings in compliance costs on the table. Further €50 billion are estimated to be gained through enhanced international business opportunities if e-customs were fully implemented.<sup>140</sup>

One key instrument of the UCC is the accreditation of businesses as **Authorised Economic Operators (AEO)**. The accreditation system has been around already for some years but

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<sup>139</sup> European Parliament (2013) written by Van Veenstra et al. 2013, 'Ubiquitous Developments of the Digital Single Market', p. 115.

<sup>140</sup> European Parliament (2013) written by Van Veenstra et al. 2013, 'Ubiquitous Developments of the Digital Single Market', p. 115.

has not been a formal requirement for cross-border commerce. Many companies were able to operate in compliance with AEO standard using only a partial accreditation. Most of these companies will now need to **upgrade their accreditation** to full AEO in order to continue their cross-border business. While in the short run full accreditation takes time and is costly (extensive IT requirements, up to 6 months of processing time before decision)<sup>141</sup> it entails large benefits in the medium to long run.

Some **AEO advantages** are:

- simplified customs procedures
- file customs through self-assessment forms bypassing customs officers
- eligibility for reduced VAT guarantees
- make bulk payments of VAT saving time and costs per job

With regards to the above, especially the **reduced VAT guarantees** could potentially enhance business opportunities of SMEs by liberating large financial assets with guarantee reductions of up to 70%.<sup>142</sup>

More broadly, medium to long term economic benefits related to the AEO accreditation are expected in parallel with the international ISO standards. Operating under ISO standards supposedly contributes to 0.15 – 5% of gross annual sales revenues of accredited companies.<sup>143</sup> Such benefits are likely since AEOs will not only enjoy access to other European markets but to over 100 countries operating under the same standards.<sup>144</sup>

#### d. Stakeholder views

Again, since the UCC has not yet been fully adopted, experiences with the new regulation are limited. The pre-implementation phase is generally judged in positive ways. International Chambers of Commerce welcome the new customs code as being long overdue. Also, they massively promote the **advantages of AEO accreditation** with its long term benefits due to uniformity in the Single Market.

Private consultancy firms are slightly more conservative in their views. They acknowledge the potential benefits of the UCC, but also highlight their **important short term costs** for many firms. Deloitte concludes that most changes will apply to the form of procedures rather than triggering real impacts.<sup>145</sup> Veracis, a UK-based customs consultancy, calls the UCC **“a complete “belt and braces” review of customs procedure including tariff classification.”**<sup>146</sup>

#### e. Conclusions

In contrast to many other initiatives, the customs code reform with its e-customs programme is one of the policy areas which is described by true actions instead of just “soft laws and pilot projects”<sup>147</sup>. The programme is advancing, but it is still way **behind its initial schedule**. Since the EU is the largest customs union, representing around 17% of

<sup>141</sup> <https://www.gov.uk/guidance/authorised-economic-operator-certification>, [Accessed 15 September 2015].

<sup>142</sup> <http://www.grant-thornton.co.uk/Documents/union-customs-code.pdf>, [Accessed 15 September 2015].

<sup>143</sup> International Organization for Standardization, (2014). ‘Economic benefits of standards’.

<sup>144</sup> Iqbal Pannu, (2014). ‘What’s the benefit? Taking a closer look at AEO in light of the latest Union Customs Code news’, Available at: [www.intrademagazine.com](http://www.intrademagazine.com), <http://www.aeb.com/multi-media/intl/docs/articles/itm-03-14-aeo-ucc.pdf>, [Accessed 9 September 2015].

<sup>145</sup> Emma van Doornik, Deloitte, (2014). ‘In 2016 the European Union will have a new Customs Code. But what’s new?’

<sup>146</sup> <http://www.veracis.co.uk/aeo>, [accessed 15 September 2015].

<sup>147</sup> European Parliament (2013) written by Van Veenstra et al. 2013, ‘Ubiquitous Developments of the Digital Single Market’, p. 155.

world trade, **every delay in the reform causes high losses** to its economic potential.<sup>148</sup> Future initiatives should focus particularly on how to advance the **necessary IT developments**.

**Table 13: Process for MCC implementation/application**

		Estimated earliest start	Estimated deadline
Legal implementation	Best case	March 2012	December 2013
	Worst case	March 2012	March 2017
IT technical implementation	Best case	March 2012	December 2017
	Worst case	March 2012	March 2030
Operational implementation	Best case	June 2017	September 2017
	Worst case	March 2030	March 2033
Total implementation	Best case	March 2012	December 2017
	Worst case	March 2012	March 2033

**Source:** European Parliament (2012b). 'Implementation of the Modernised Customs Code', Figure 1, p. 10.

The 3-year delay of IT implementation (in the best case scenario for MCC implementation in the 2012 EP study "Implementation of the Modernised Customs Code" has cost businesses over €260bn (3 years x €87bn).

Policy makers need to be aware of the pace at which IT is advancing. It appears that the Customs 2020 programme is trying to find remedies for parts of the UCC which will be already outdated in 2016. A **continuous cycle of feedback** and adjustment during this implementation phase as proposed by London Economics' 'Smart Single Market Regulation' study is essential.<sup>149</sup>

As with VAT, maximum exploitation of ICT in the implementation of customs reform, based on an ambitious goal for reducing administrative burdens (possibly to zero for certain vetted economic operators) should be the aim of the ongoing reform programme.

#### 3.3.4. REACH (chemical industry)

##### a. Objectives

Since 2007, the Registration, Evaluation and Authorization of Chemicals (REACH) regulates the chemical industry in the EU in order to **manage the risks posed to human beings and the environment through chemicals**. Moreover, it has the goal to increase competitiveness of the chemical industry. It furthermore supports alternative methods of testing hazardous substances to reduce animal testing.

The registration serves to monitor the flow and handling of substances. The subsequent authorization mechanism is put in place to ensure that hazardous substances are handled according to specific safety standards. The regulation should also pinpoint options of replacing particularly risky substances through other, less toxic solutions. The registry should be built without harming the competitiveness of businesses in the Single Market.

<sup>148</sup> European Parliament (2013) written by Van Veenstra et al. 2013, 'Ubiquitous Developments of the Digital Single Market', p. 114.

<sup>149</sup> London Economics (2015).

## b. Instruments

Anyone who imports more than a tonne of a substance into the EU/EEA per year needs to register its nature, as well as any risks associated with it.<sup>150</sup> The **registration obligation** may in fact concern any part of a supply chain and not only the actual importer or producer of a substance. Importers and distributors of final manufactured products which contain, or which could submit a substance that falls under REACH must register their products accordingly.

- **Compliance checking** – the European Chemicals Agency (ECHA) will verify the truthfulness of registration data provided.
- **Dossier evaluation** – the ECHA will evaluate whether to grant the right for animal testing in order to further understand the nature of a substance.
- **Restriction** – the use of a certain substance may be restricted if it poses unacceptable risks to human or the environment.
- **Customer safety sheets** – companies need to identify their position in the supply chain of a substance, register it and elaborate on its use. Additionally, some substances necessitate exposure scenarios. These describe under which circumstances the use of the substance is regarded as safe.

## c. Expected benefits

REACH is still being rolled out, but an intermediate assessment already reaches **rather positive conclusions** on its effects on the protection of the Single Market and on the **competitiveness** of the European chemical industries.<sup>151</sup> Especially the long term benefits of the regulation are expected to be large and positive.

While imposing important short term costs, particularly on SMEs, it is seen as an integral ingredient to the harmonization of the Single Market and the development of its free market competition. Based on this assessment, the European Commission has reached the conclusion that the regulation will not be amended, but the next phase shall **consider ways of reducing costs for SMEs**.<sup>152</sup>

Despite the apparently **high costs of compliance**, companies do not consider REACH to be a determining factor when deciding to enter the European market or not. In fact, up to now, no effects on the volume of trade have been measured. Also, no effects have been measured regarding consumers' views on product safety following REACH, but it might be too early for such an assessment. Given that there was extensive lobbying against REACH before its implementation, the conservative views on its impact are to be rated positively. According to a survey by the Centre for Strategy & Evaluation Services, **40%** of respondents had a **neutral view** on the regulation, **20%** stated a **positive** and **40%** a **negative opinion**.<sup>153</sup>

## d. Stakeholder views

Before REACH was passed in 2006, there was a **long and harsh fight** between the chemical industry, national governments and the European Commission. Companies **expected a massive loss of competitiveness** due to the increased administrative

<sup>150</sup> <http://echa.europa.eu/web/guest/regulations/reach/>, [Accessed 15 September 2015].

<sup>151</sup> Centre for Strategy & Evaluation Services (2012). 'Interim Evaluation: Functioning of the European chemical market after the introduction of REACH Final report'. Available at: [http://ec.europa.eu/enterprise/sectors/chemicals/files/reach/review2012/market-final-report\\_en.pdf](http://ec.europa.eu/enterprise/sectors/chemicals/files/reach/review2012/market-final-report_en.pdf) [Accessed 22 September 2015].

<sup>152</sup> European Commission (2013c). Memo : 'Top 10 most burdensome EU laws for small and medium-sized enterprises: How the Commission is helping SMEs' [http://europa.eu/rapid/press-release\\_MEMO-13-168\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-168_en.htm), accessed 17 September 2015.

<sup>153</sup> Ibid.

burdens, and threatened to move production sites abroad. National governments, especially Germany, fought alongside the industry against the regulation as they feared tax losses due to eventual off-shoring.<sup>154</sup>

Now, 8 years after implementation, **voices against REACH have softened**. On the one hand, BASF retains that processes have become much more complex and costly. The company has hired 250 employees to work on the submissions to ECHA, costing around €50-55 million per year. Moreover, Safety Data Sheets “have become significantly more complex” which led them to produce a 7-page information pamphlet for their customers and suppliers.<sup>155</sup> But on the other hand, it claims that these procedures are “**well worth the money in the end**” due to increased security and product safety.<sup>156</sup>

Chemical Watch – an international News Portal for chemical businesses – assesses the **costs and benefits to be very diverging for different companies**. Large companies with well documented substance research may benefit from selling their information to other companies who are in need of it to meet their compliance standards. On the other hand, purchasing or collecting detailed data on all used substances may **pose unbearable costs on SMEs**. ECHA has started to reply to such concerns by making more data freely available, which is welcomed by companies.<sup>157</sup>

#### e. Conclusions

REACH is a far-reaching regulation which generated a lot of public outcry in industry and national politics. A few years after its implementation however, it is **mostly seen positively**. Companies did not massively offshore and the European market for chemicals remains competitive. From a policy perspective, REACH is a success in the sense that it seems to set the right incentives towards a safer use of chemicals and the development of substances with the same functionality without toxicity.

Nevertheless, there is certainly **room for improvement**. REACH is still on top of the list of the **most burdensome EU laws**.<sup>158</sup> The USA has adopted regulations similar to REACH but they do involve specific distinctions. Especially, the US administration is trying to obtain a similar registry of substances without leaving the burden of administration with the companies. One recommendation would be to expand ECHA’s responsibilities in assisting companies in their REACH applications.<sup>159</sup>

### 3.4. Summary

Taking stock of current initiatives shows that EU policies are working in various ways towards the integration of the Single Market. The most important areas of action have been identified. **Large reductions in the costs and barriers to the Single Market are to be**

<sup>154</sup> Jorgo Riss, Greenpeace European Unit. (2010). ‘Chemical Warfare – The Lobbying Battle on REACH’ In ‘Bursting the Brussels Bubble - The battle to expose corporate lobbying at the heart of the EU’. <http://www.alter-eu.org/sites/default/files/documents/bursting-the-brussels-bubble.pdf> accessed 16 September 2015.

<sup>155</sup> [https://www.basf.com/documents/corp/en/sustainability/management-and-instruments/responsible-care/product-stewardship-and-global-product-strategy/reach/BASF\\_REACH\\_Tips\\_for\\_Safety\\_Data\\_Sheets.pdf](https://www.basf.com/documents/corp/en/sustainability/management-and-instruments/responsible-care/product-stewardship-and-global-product-strategy/reach/BASF_REACH_Tips_for_Safety_Data_Sheets.pdf), [Accessed 16 September 2015].

<sup>156</sup> Simon, F. (2012). ‘REACH chemical law ‘worth the money in the end’, says BASF’. Available at: <http://www.euractiv.com/sustainability/reach-chemical-law-worth-money-b-news-514565>, [Accessed 16 September 2015].

<sup>157</sup> <http://chemicalwatch.com/21630/the-reach-data-market-an-sme-view>, [Accessed 16 September 2015].

<sup>158</sup> European Commission (2013). Memo : ‘Top 10 most burdensome EU laws for small and medium-sized enterprises: How the Commission is helping SMEs’ [http://europa.eu/rapid/press-release\\_MEMO-13-168\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-168_en.htm), [Accessed 17 September 2015].

<sup>159</sup> Black, H. (2008). ‘Chemical Reaction: The U.S. Response to REACH’. Environ Health Perspect. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2265068/>, [Accessed 16 September 2015]. <http://blog.journals.cambridge.org/2013/07/reach-hardly-reaching-into-us-chemicals-regulation-reform/>

**expected upon completion of all of the above initiatives.** Yet, it is **difficult to quantify** these effects, or to express an opinion on which initiatives are the most promising in terms of necessary reform efforts and expected cost reductions.

Information from ex-post assessments is limited. According to London Economics (2015) ex-post assessments are an integral part of the enhanced performance-based policy cycle. Lessons learned in the ex-post assessment may provide valuable information to adjustments of the policy at hand (vertical feedback), as well as to other initiative it relates to (horizontal feedback). Such assessments, especially if based on quantitative data, require not only a high level of expertise but also high quality data sources.

There appears to be room for improvement on data collection and data processing. In relation to this point, the following section is going to elaborate potentials for further reductions in costs and barriers to the Single Market especially with regard to electronic services in public administration, ICT analytics and mass-data exploitation.

In terms of the high-level priority areas, progress is being made across all the identified areas, although typically the speed of progress leaves something to be desired.

Services and product market regulation in particular lack a clearly focused strategy to lower barriers and costs. The Digital Single market strategy and its components overlap to a considerable degree with the services and product market regulation action areas (e.g. VAT harmonisation), but the focus on digital sectors risks losing out on benefits from removing barriers in traditional sectors of the economy. Actions that specifically aim to help SMEs are desirable in addition to sector wide initiatives.

Overall, vague initiatives with uncertain time horizons are too common in the EC's policy programme. The cost of slow Europe, i.e. the cost of delaying impactful action, together with the lack of a clear focus on costs and barriers (likely a result of insufficient visibility/quantification of specific barriers) continue to present a formidable challenge.

**Table 14: Priority action areas and activities**

No.	Priority action area	Progress overview	Cost of non-Europe**
1.	<b>Digital Single Market</b>	<p>Ongoing: 16 initiatives run until end of 2016. e-ID is not yet interoperable across the EU.</p> <p>E-government: Ongoing, but mostly in pilot stage. Benefits will start to materialise with the introduction of interoperable solutions which are still being developed.</p> <p>An EU-wide Online dispute resolution platform is expected to be operable in 2016.</p> <p>Review of the Regulation on Consumer Protection Cooperation planned for 2016, as are measures in the area of parcel delivery; initiatives on data ownership, free flow of data (e.g. between cloud providers) and on a European Cloud; a</p>	<p>Potential GDP gains from completing the Digital Single Market: €415bn per year</p> <p>Up to 4% increase in EU GDP over 2010-2020 resulting from completing the Digital Single Market</p>

No.	Priority action area	Progress overview	Cost of non-Europe**
		review of the Audiovisual Media Services Directive; and legislative proposals to reform the current telecoms rules*	
2.	<b>Services</b>	No coherent push for Single Market for services, although considerable overlap with Digital Single Market initiatives	<p>Potential GDP gains from closing gaps in the EU Single Market in free movement of services: €338bn</p> <p>0.8-2.6% increase in EU GDP in the long run since adoption of the directive resulting from its full implementation and enforcement.</p> <p>EUR 100-304 billion in savings in total resulting from full implementation of the Services Directive.</p>
3.	<b>Product market regulation</b>	Better regulation initiative and REFIT. However, there is a risk that without effective coordination between the various institutions involved in the legislative process, an evaluation by REFIT standards may just add another layer of bureaucracy.	<p>Cost of non-Europe in free movement of goods: 183bn per year</p> <p>2.2-3.3% increase in EU GDP in 2005 resulting from goods market integration over the 1960-2000 period; and 2.2-8.8% increase in EU GDP in the very long run – resulting from full integration of goods markets.</p> <p>Increase of EUR 183-269 billion in the total value of merchandise exports between Member States in the long term resulting from removal of barriers to FDI and</p>

No.	Priority action area	Progress overview	Cost of non-Europe**
			non-tariff barriers within the internal market for goods. 1.8% increase in EU GDP resulting from perfect operation of Regulation 764/2008 (mutual recognition).
4.	<b>Public procurement</b>	Current initiatives in e-procurement are very broad but too slow in their implementation.	Potential GDP gains from closing gaps in the EU Single Market: e-procurement: €100bn per year Public procurement and concessions: €36bn per year Administrative burden of procurement procedures €216.3m per year Potential efficiency gains in through greater cooperation/efficiency gains in the defence industry: €10bn per year 0.1-0.5% increase in EU GDP over 2011-2021 resulting from savings related to public procurement directives (prior to revision), if the directives applied to all EU public procurement. Potential savings of EUR 36.5-66.5 billion annually resulting from closure of remaining gaps in EU public procurement legislation.

No.	Priority action area	Progress overview	Cost of non-Europe**
5.	<b>Implementation of existing Directives</b>	Incentives to monitor progress of EU legislation. Policy assessments will be planned for at every stage of the policy cycle. Being rolled out. Benefits will materialise during evaluation phases of new policies (usually 3-5 years after implementation).	No quantification available

**Source:** \* Roadmap for completing the Digital Single Market; \*\* see

Table 6.

## 4. APPROACHES TO REDUCING BARRIERS & COSTS

### KEY FINDINGS

1. **Ubiquitous services** – i.e. electronic solutions that are available anywhere and at any time – are changing public administration services. They are likely to be key facilitators in reaching **interoperability** across EU administrations.
2. An important ingredient for future effective public administrations and competitive EU businesses is the collection and exploitation of ‘**big data**’. Advanced analytics can show new trends and bring about **innovative insights** which, if effectively fed back into the policy cycle, may inform current and future initiatives.
3. We studied two international cases in their use of ubiquitous services: **South Korea** and **Estonia**. These cases show the reductions in transactions costs that can be achieved and the potential for reducing barriers to the Single Market.
4. These cases also emphasise the importance of measures to ensure **privacy** and **security**, **electronic IDs** and **digital signatures** in order to achieve the benefits.
5. The approaches in both South Korea and Estonia provide good examples for the EU. These systems fulfil several desirable criteria: **decentralisation**, **interoperability** and **user-friendliness**.
6. It is important to recognise that whilst e-Government services can bring **savings in administrative costs**, the biggest benefits are likely to derive from **time savings and better quality services** for citizens and businesses. **Minimal, possibly zero compliance costs for SMEs** should be seen as a realistic target.
7. Many building blocks to ubiquitous services are already being developed across the EU. Highest standards of **interoperability** and **cyber safety** are required to fully exploit the potentials of cross-border e-government tools.
8. As part of the EU e-Government Action Plan 2011-2015 the e-SENS project aims to integrate the previous Large Scale Pilots (LSPs) which are looking for interoperable solutions in **e-ID**, **e-signature** etc. At its core stands the development of an interoperability layer, called **e-Delivery**.
9. In addition, the EU has many promising **e-government tools** in place. Assistance tools such as **SOLVIT**, **Your Europe Advice** and **Enterprise Europe Network** are important tools which help increasing cross-border exchange for goods, services, and labour.
10. The main challenge to the tools’ usefulness is their **visibility**. Target audiences are currently too unlikely to discover the appropriate assistance. Search engine optimization might be a way forward to increasing visibility.
11. A particularly large impact from **interoperable u-services** is to be expected with respect to labour mobility. Improving the recognition of professional degrees as well as facilitating access to and conversion of social security abroad is crucial.

### 4.1. New approaches

The previous Chapter discusses current initiatives to reduce barriers to the Single Market. These include initiatives relating to ‘better regulation’ and initiatives aimed at reducing barriers and costs in specific sectors (for example: VAT reform, REACH in chemical industry, e-procurement, Customs Code Reform, e-ID).

As noted earlier in this Study, the Digital Single Market is one of the areas in which there are the greatest potential gains from completing the Single Market. The greater use of ICT and e-Government offers tremendous potential for significant reductions in information and transactions costs. Strong initiatives in the field of ICT and e-Government could complement current sector-specific initiatives in a new wave of regulatory reforms.

This Chapter examines the potential role of ICT and e-Government initiatives in reducing costs and barriers to the Single Market, reviews some international experiences with e-Government and makes suggestions for how greater use of these types of initiatives at an EU level could complement other current initiatives and further reduce costs and barriers.

#### 4.2. The role of ICT in addressing costs and barriers to the Single Market

It has previously been identified that an **effective exploitation of data** is crucial for the **ex-post assessment** phase of the policy cycle.<sup>160</sup> It has also been suggested that it is important to articulate and implement a **robust data collection plan ex ante** in order to be able to implement a robust ex post impact assessment.<sup>161</sup> Collecting **monitoring data** with the implementation of all new legislative proposals will lead to the development over time of a more comprehensive dataset for robust policy analysis.

At the same time, such data exploitation may further **reduce costs and barriers** to the Single Market through the broad application of online tools and cloud services. Especially the interaction between citizens, businesses and public administration through e-government solutions would become more cost effective. A fully data based, paperless environment would necessitate less physical resources (in terms of administrative staff and infrastructure) while reducing transaction costs for the end user (especially by speeding up administrative process times and reducing the number of points of contact).

Such services are commonly called **“ubiquitous” services**, or in short **“u-services”**. Following the European Parliament’s study on ubiquitous developments of the Digital Single Market, ubiquity may loosely be defined as information and services being present and accessible anywhere by anyone at any time.<sup>162</sup>

The key benefit of these types of services is that they improve efficiency and reduce costs and barriers to the Single Market by reducing transactions costs. Maciejewski et al (2014) note that improved efficiency from the availability of online access to content derives from two main sources:

- immediate and facilitated access to information for information consumers, as opposed to slower and less convenient access to information through other mechanisms; and
- the low cost of sending, sharing and receiving electronic information, compared to physical means of transport that require greater resources, energy and environmental costs.

The substitution of physical means of transport could involve replacing, for example, the transport of humans for face to face meetings with virtual meetings or the replacement of physical information goods, such as letters and books, with electronic alternatives.

Ubiquitous services which reduce transactions costs can be initiated and supplied by private sector companies and/or by governments at any level (local, regional, national or supra-national).

<sup>160</sup> London Economics (2013b).

<sup>161</sup> London Economics (2015).

<sup>162</sup> A detailed discussion of definitions of the term “ubiquitous” may be found in European Parliament (2013) ‘Ubiquitous Developments of the Digital Single Market’.

This chapter starts by describing **technical standards** which could be further developed to achieve cost effective u-services in the EU. **International experiences with e-government** solutions are presented in section 4.5. These include a range of ICT-based solutions that can improve access to information and reduce transactions costs for citizens and businesses. They can also reduce administration costs for governments. Examples include:

- individual ICT-based services, such as South Korea's e-procurement system;
- platforms that enable interoperability between information systems (e.g. Estonia's X-Road and the EU's pilot e-Delivery platform);
- current EU ICT-based systems which seek to reduce barriers to the Single Market by improving the flow of information between administrations and between citizens or businesses and administrations (e.g. Your Europe Advice, Enterprise Europe Network, SOLVIT);
- using ICT-based solutions to make improvements to the operation of EU policies (discussed in Chapter 3), such as:
  - measures to harmonise business registers,
  - the introduction of an online dispute resolution mechanism,
  - reforming the customs code; and
  - reforming VAT through a standardised VAT application process.

### 4.3. Advanced analytics

Effective data collection and handling is a requirement for the implementation of ubiquitous services. **Cloud computing, data analytics, and big data** provide the basis for such data management as part of Single Market integration.<sup>163</sup>

The McKinsey Global Institute (2011) says that **future effectiveness of governments and competitiveness of businesses** will crucially benefit from the exploitation of big data. To this end, also Tsoukias et al. (2013) point to two important factors for policy analytics, namely the **exploration of existing datasets** and the **creation of new datasets**.

With regards to the first; existing data need to be explored. This necessitates specialised data analysts. By definition, **big data is too complex and too vast for traditional analytical tools**. Hence, specialised analysts are required to identify trends and prepare data for digestion before trained experts interpret them to draw insights.

A lot of data is already collected (i.e. mandatory tax and statistical reporting mechanisms) and should be exploited in the scope of improving the policy-making process<sup>164</sup>. Second, new datasets need to be created. **Products and processes should be monitored** using innovative ways of producing data as by-products in existing procedures. The added value from big data does not always come from anticipated measures, but is often the result of identifying new trends that emerge from the data away from its initial purpose.

**There are many types and sources of data:** from qualitative evidence to statistical data; indicators and quantitative analysis; registries of local, regional, and national authorities; existing Single Market indicators and scoreboards; academic and other research; more innovative sources comprise the use of sensor technology that can measure

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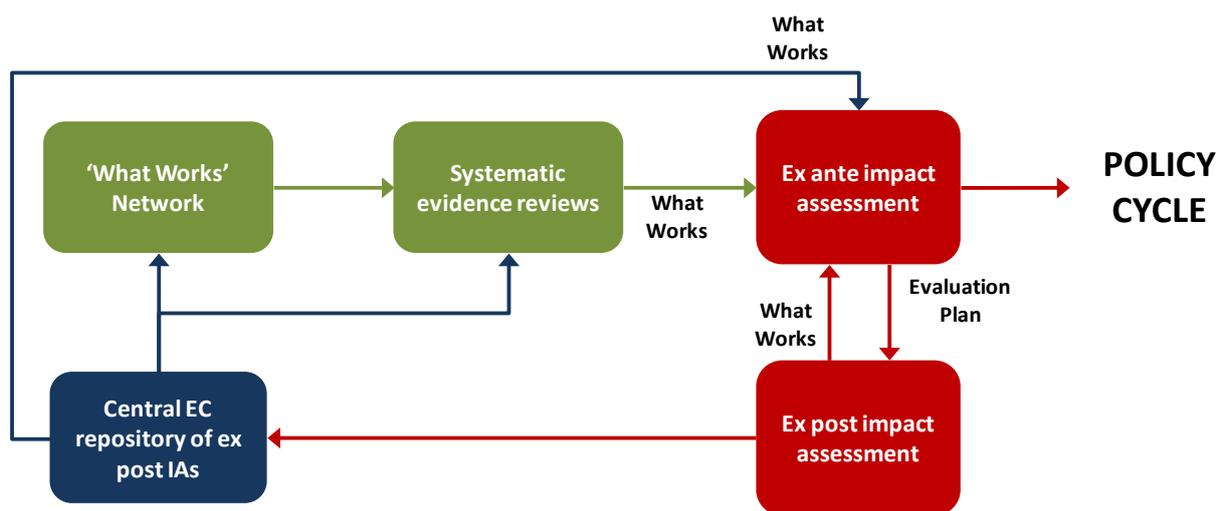
<sup>163</sup> London Economics (2015).

<sup>164</sup> London Economics (2013b).

the use of a product or service in up to real-time. **Real-time monitoring** can enable more rapid responses to the information being generated and allow public authorities to adjust and **experiment** more easily with policy delivery. For example, real time monitoring of website use could be combined with an experimental approach to test consumer responses to alternative means of presenting information.

As elaborated in detail by London Economics (2015), advanced analytics can contribute to **closing the cycle of evidence-based policy making**. They suggest a number of ways in which analytical evidence could enter the policy cycle. Among other things, they recommend the creation of a central EC repository for all ex-post impact assessments to allow learning for the policy at hand (vertical feedback) as well as for initiatives in other fields (horizontal feedback). Key findings should be highlighted and fed back into the policy cycle through 'What works' networks.

**Figure 18: Making better use of analytical evidence**



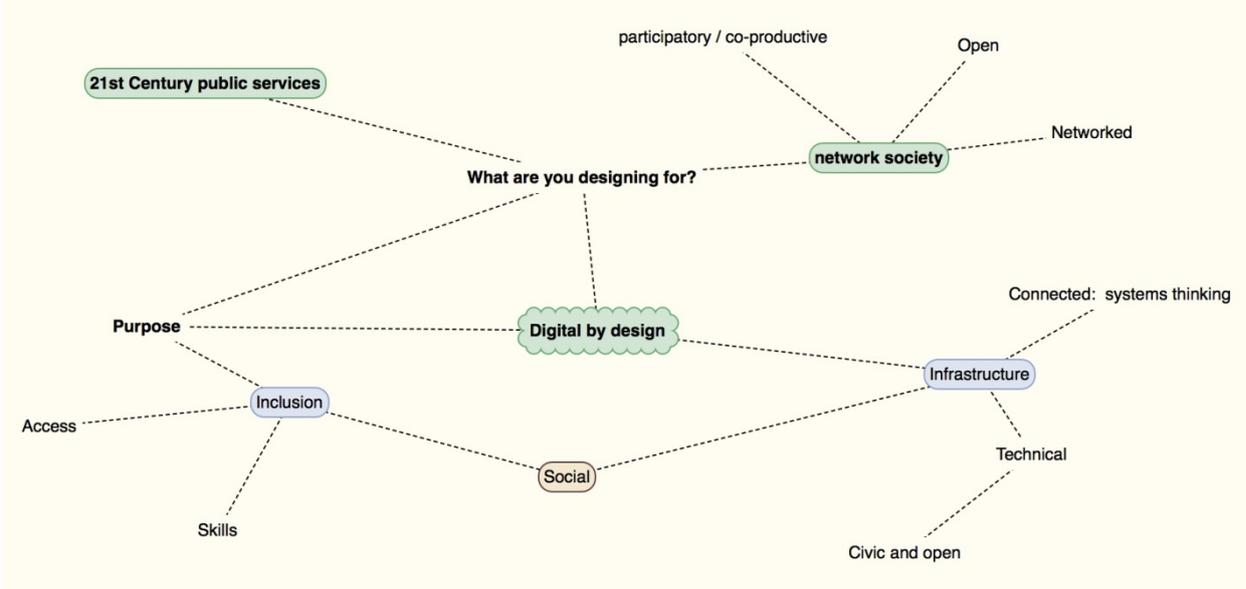
Source: London Economics (2015)

#### 4.4. Digital by design

Digital by design has the objective of making government services available online. Services should be digitised with regard to **user-friendliness**, **cost savings** and **ubiquity**.

The term "digital by design" is also often referred to as "digital by default" which suggests that any service should be available in digital format. This is not necessarily the case and stresses the importance of the **"by design"** part. Online services should be designed in a way to optimize users' experiences and should provide clear advantages, at least in the long run, compared to offline services. On the contrary, traditional services which are best dealt with offline and which would suffer quality reductions through digitisation should remain offline.

**Figure 19: Digital by design as a feedback mechanism**



**Source:** Digital by design? Questions not answers; <http://www.curiouscatherine.info/2014/11/11/digital-by-design-questions-not-answers/>

The UK government, in particular, has put digital by design on its agenda and is urging other EU member states to follow its example<sup>165</sup>. The UK Government Digital Service has recently published a study where it estimates the **cost savings** linked to digitization of government services to lie around **£1.7 – 1.8 billion annually**.<sup>166</sup> These savings are likely realized through several channels: reduction in staff resources as online services are handled quicker than offline services; reduction in costs in infrastructure (buildings, postage, packaging materials); reduction in costs for supporting IT systems of the current infrastructure. The above estimates are ballpark estimates. Some services are already realizing these cost reductions as their degree of digitization is already well advanced, while others might still be investing more than they are saving.

To give some examples of where savings originate, a study commissioned by the UK government surveyed 120 local authorities and concluded that face to face interactions cost on average £8.62, phone interactions cost £2.83, while web interactions are estimated to cost only £0.15.<sup>167</sup> Also, many person to person interactions can be avoided if citizens can easily find the required information online.<sup>168</sup>

Bringing such services to other EU member states and enabling interoperability between them would multiply the savings potentials significantly. Current estimates suggest a **saving of €10 billion annually across the EU** if services were indeed “digital-by-design”<sup>169</sup>. This estimate uses the cost savings expected for the UK due to its digital by design approach and projecting savings across all EU member states. Another estimate relying on a projected cost benefit analysis taking the **Danish Mandatory Digital Self-Service as a base yields net potential annual saving for governments of around €**

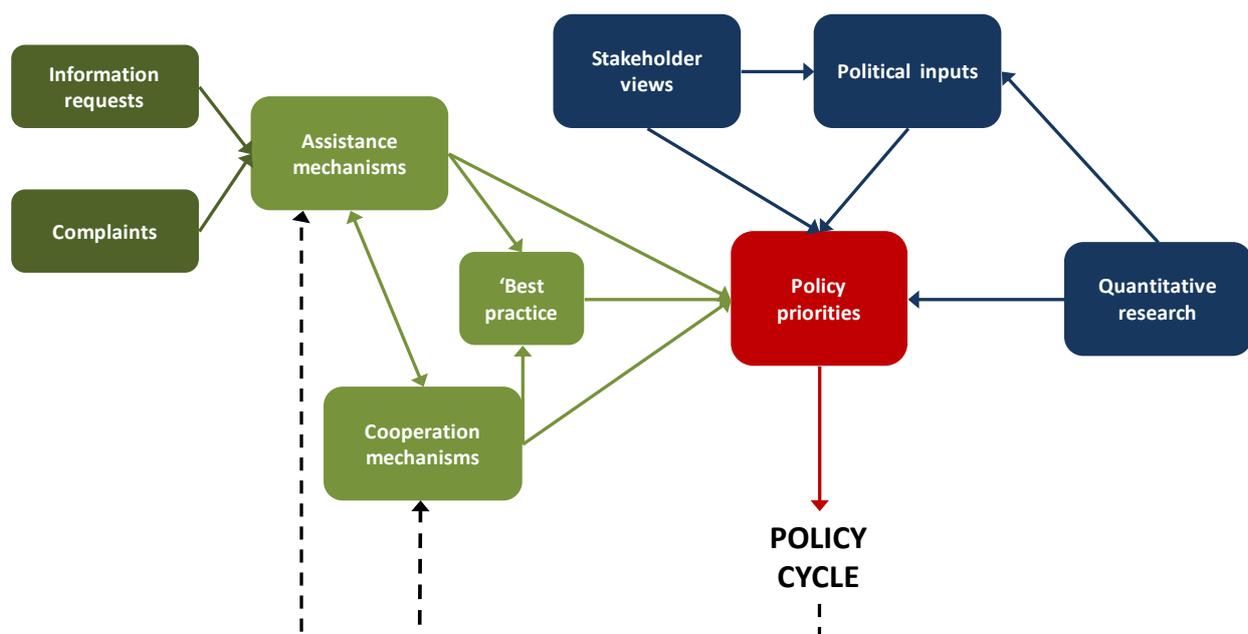
<sup>165</sup> Baroness Neville-Rolfe, “Vision for a Digital Single Market”, 2015. Speech given at a Digital Age conference in Copenhagen, 25 February 2015.  
<sup>166</sup> Cabinet Office and Government Digital Service, 2012. “Digital Efficiency Report”, in “Government Digital Strategy: reports and research and civil service reform”.  
<sup>167</sup> Cabinet office (2013) ‘Government Digital Strategy: December 2013’ available at : <https://www.gov.uk/government/publications/government-digital-strategy/government-digital-strategy>, accessed : 4 November 2015.  
<sup>168</sup> The National Audit Office for HM Revenue & Customs (2010) ‘Handling telephone enquiries’ available at : <https://www.nao.org.uk/wp-content/uploads/2010/01/0910211.pdf>, accessed : 4 November 2015.  
<sup>169</sup> European Commission (2014) ‘Study on eGovernment and the Reduction of Administrative Burden’.

**6.5 billion at EU28 level by 2017.**<sup>170</sup> These estimates comprise savings to governments only. Overall, benefits are likely to be higher if benefits to citizens and companies and potential cross-border efficiencies were accounted for as well.

Moreover, well designed systems allow **feedback to iteratively improve services**. User feedback, for example through the use of social media interactions, would inform the system designers and eventually the policy-maker of ongoing problems as well as best practices.

London Economics (2015) have identified ‘digital’ to stand at the core of smart regulation. The same report also developed the chart shown below to illustrate the various channels through which policy makers can be made aware of deficits in current practises. A digital-by-design approach, that automatically signposts specific areas of interest as well as best-practice examples, appears to be particularly adequate in this type of feedback cycle.

**Figure 20: Using information from governance tools**



Source: London Economics (2015)

#### 4.5. International experiences in e-government

While efforts to increase the use and diffusion of e-government solutions are widespread across the EU, according to the UN e-government surveys many **non-EU states are ahead of the Union**. Drawing from international experience may help identify key areas for action, as well as dealing with encountered obstacles efficiently.

We study the experiences of South Korea and Estonia.

##### 4.5.1. South Korea

South Korea has been mainstreaming digital innovations spanning the private and public sector since the 1980s. In 1999 the country set a political objective of making the Korean people the largest and most frequent PC users in the world. Since then, it has heavily invested in ubiquitous services such as the diffusion of **broadband services, RFID sensors, and e-ID systems**.

<sup>170</sup> European Commission (2014) ‘Study on eGovernment and the Reduction of Administrative Burden’.

These innovations have gained Korea a reputation of being the world's e-government leader - South Korea was ranked first in the three latest United Nations e-government surveys in 2010, 2012 and 2014.<sup>171</sup>

Current Korean u-services include customised **service portals for citizens** (Korea e-Government Portal, [www.korea.go.kr](http://www.korea.go.kr)) and **integrated services for businesses** (Government for Business Portal, [www.g4b.go.kr](http://www.g4b.go.kr)), an **e-people portal for digital complaints and initiatives**, **electronic procurement**, **e-learning**, **e-health**, and **e-Customs/u-Port systems**.

Wherever possible, services and interactions between administration, citizens and businesses are digitized. **Minimizing face-to-face contact** and the need to physically attend offices of public administration has increased service efficiency massively and achieved large cost savings for the government and citizens alike. For example, in 2008, the **comprehensive online tax system** ([hometax.go.kr](http://hometax.go.kr)) achieved **estimated savings** of KRW 150 billion (approx. €90 million) for the government and additional savings of KRW 400 billion (approx. €240 million) for citizens due to faster processes, reduced printing, posting and travel costs.<sup>172</sup> Other examples of reductions in transaction costs are depicted in the Table overleaf.

The e-government strategy follows a **one-stop portal** approach meaning that all services should be accessible through a central site. This practice has led to an increase of the rate of **information sharing** by 27% by 2010 which allowed for more efficient cooperation between government services and less duplication of data entries.<sup>173</sup> However, despite the high degree of interconnection, some citizens are struggling with complexity of the system, in particular the dispersion of similar/related services across different ministries.<sup>174</sup>

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<sup>171</sup> United Nations (2014). The survey aims to provide "a holistic view of e-government development resting on three important dimensions: (i) the availability of online services, (ii) telecommunication infrastructure and (iii) human capacity".

<sup>172</sup> Ministry of Security and Public Administration (2012) 'e-Government of Korea – Best Practices', p. 27.

<sup>173</sup> Ministry of Public Administration and Security, National Information Society Agency, Republic of Korea (2010) 'Measuring the performance and impact of e-government in Korea'.

<sup>174</sup> National Information Society Agency & Seoul National University (2014) 'e-SHARE: Korea e-government Newsletter – Development Strategy of Gov 3.0 Cloud'.

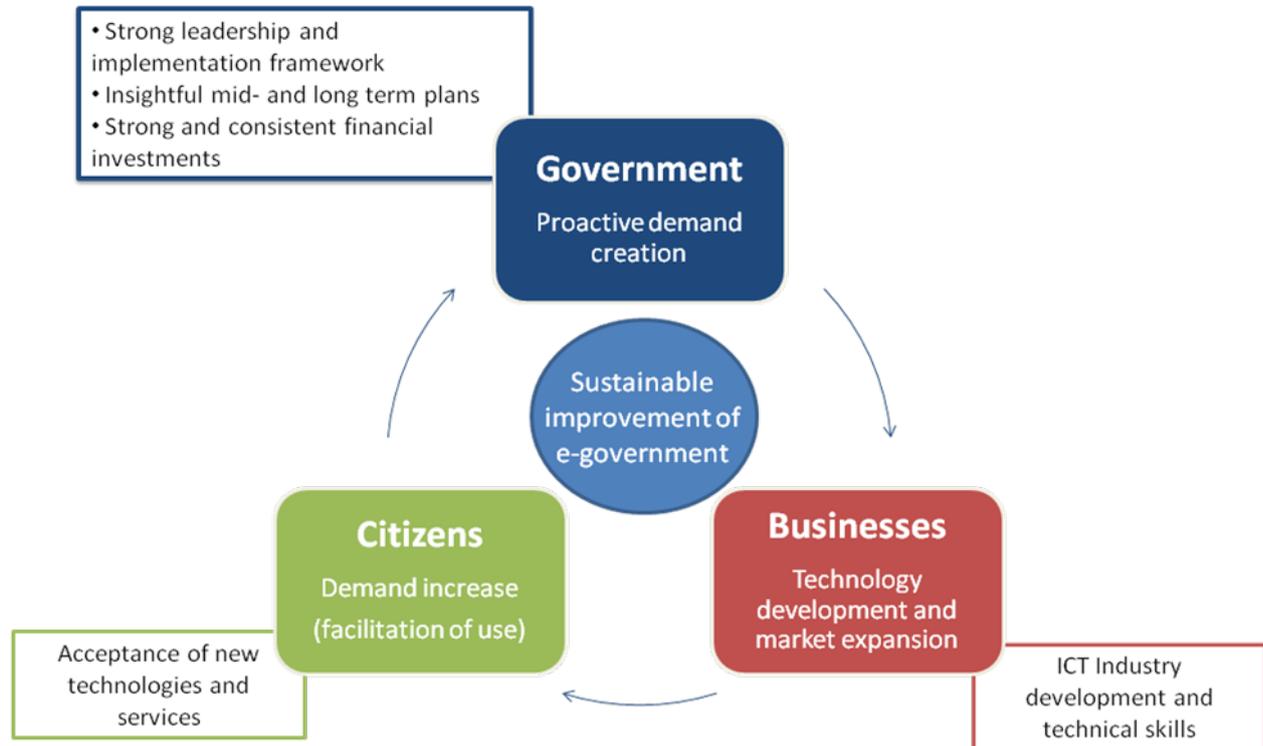
Table 15: Examples of the reductions in transaction costs from e-Korea

Service	Example of savings
<b>Comprehensive Tax System</b>	All tax affairs can be handled from a distance. Citizens visiting the tax office fill in forms using <b>electronic pens</b> thus limiting the amount of data to be entered manually. In 2008, <b>savings</b> were estimated to amount to KRW 150 billion (approx. €90 million) for the <b>government</b> and KRW 400 billion (approx. €240 million) for <b>citizens</b> due to faster processes, reduced printing, posting and travel costs.
<b>Government Integrated Data Center (GIDC)</b>	The portal is responsible for all IS management. Due to technological progress in data handling, security and error management, the system now runs in a stable manner 24/7. In fact, <b>error response times have been reduced from 67 minutes to 4.8 seconds.</b>
<b>e-Customs Clearance System</b>	Massive time and <b>cost savings</b> are achieved through fully automatic customs saving KRW 3.8 trillion (€ 2.28 billion) in <b>business capital turnover, warehouse capacity and staff reduction.</b> <b>Processing times</b> have decreased significantly: Export : 1 day → 1.5 hours Import: 2 days → 1.5 hours Refund: 2 days → 5.2 hours Payment: 4 hours → 10 minutes
<b>e-Procurement (KONEPS)</b>	<b>Improved processes and simplified procedures</b> brought annual savings of KRW 8 trillion (€4.8 billion). These are split between KRW 1.4 trillion in public sector and KRW 6.6 trillion in private sector savings (travel costs of suppliers to government offices, paper administration, and postage).
<b>Online Patents</b>	All patents are now <b>published online</b> - no longer via a print journal. Savings in paper administration and postage were estimated at KRW 231.6 billion (€139 million) by 2006. KRW 66 billion (€39.6 million) are saved in application costs for citizens (travel, postage, document production). <b>Patent examination periods</b> have also decreased from 21 months (2004) to 16.8 months (2011).
<b>e-people citizen government interaction portal</b>	Citizen-government interactions including <b>public hearings are digitalized reducing travel times and public infrastructure costs.</b> Ministries can also consult a more varied sample of citizens and reach remote areas more easily.

Source : Ministry of Security and Public Administration (2012) 'e-Government of Korea – Best Practices'.

Ultimately the ‘Smart Government’ approach should further enhance government, citizen and business interactions in a virtuous cycle as depicted in Figure 21. The enhanced access to government services coupled with further innovations should ultimately help **improve social problems** such as low birth rates, ageing society, social security and public welfare.<sup>175</sup>

**Figure 21: Virtuous cycle among citizens, government and businesses**



**Source:** Ministry of Security and Public Administration, ‘A Journey to e-Government in Korea’, available at: [https://polcms.secure.europarl.europa.eu/cmsdata/upload/b3836297-7ccc-42c3-aa48-c3c9f4318450/att\\_20141117ATT93451-8527004165473213191.pdf](https://polcms.secure.europarl.europa.eu/cmsdata/upload/b3836297-7ccc-42c3-aa48-c3c9f4318450/att_20141117ATT93451-8527004165473213191.pdf), accessed 6 November 2015.

Korea was also able to establish **e-government exports** as a new branch of its economy. Over the last ten years, Korea has exported several of its best practice systems. For example, Korea’s electronic customs clearance system is now being used in Kazakhstan, Kyrgyzstan, Dominican Republic, Mongolia, Guatemala, Ecuador, Nepal and Tanzania. These exports generated revenues USD 340 million in 2012.<sup>176</sup> Also the systems for e-procurement, digital border controls, the comprehensive tax systems etc. have been successfully exported to neighbouring countries as well as all around the globe.

South Korea’s recent experience with ‘u-cities’ is outlined in the Box below.

<sup>175</sup> Ministry of Security and Public Administration (2012) ‘e-Government of Korea – Best Practices’, p. 4.

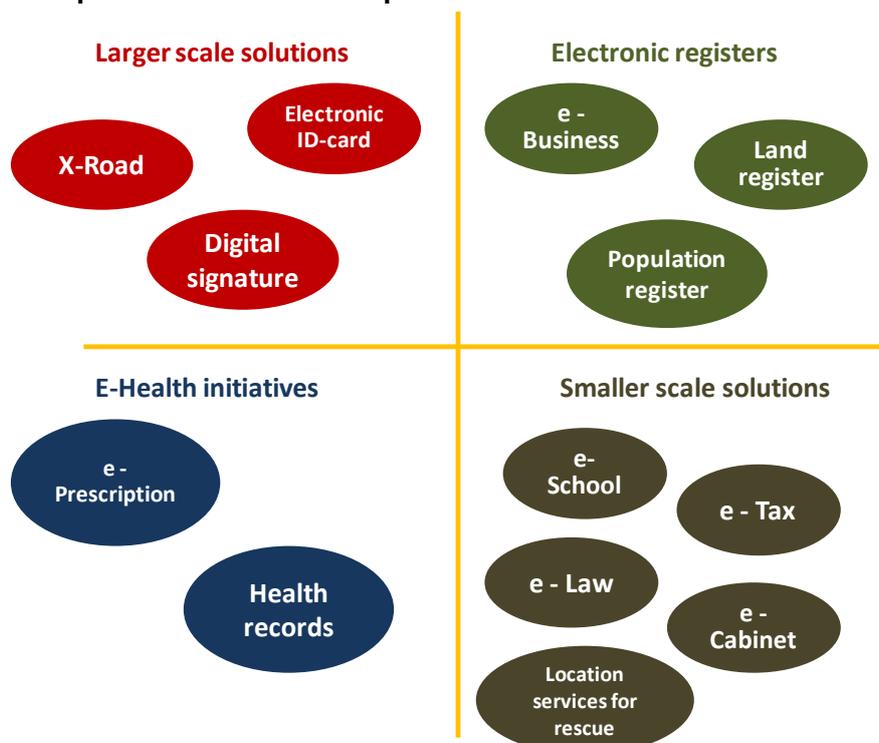
<sup>176</sup> National Information Society Agency (2014) ‘National Informatization White Paper – Republic of Korea’, p. 6.



assumption that successful introduction of e-services is built on a **decentralised**, distributed system in order for **all components to be linked or added on a platform-independent basis**. Centralised databases or systems are avoided. Small, efficient projects are favoured over large-scale developments. The success of Estonia's ubiquitous strategy is supported by four pillars: 1) provide **inexpensive internet access** to citizens, 2) **digitalise data** necessary for government services, 3) **formalise and standardise the exchange** of these data, and 4) introduce a **digital identity**. The system runs in a paperless fashion.

Ubiquitous solutions in Estonia cover a wide range of services. Some examples are provided in the Figure below.

**Figure 22: Examples of Estonian ubiquitous solutions**



**Source:** various

Domestic and foreign companies alike may request unique e-IDs to access the Estonian e-government services by registering with the e-Business Register. Once they are uniquely identified, they may register for government services. For example, they may access all public procurement tenders, file tax declarations and customs forms. Also entrepreneurs may set up a company in a fully digital manner. A remarkable record was achieved in 2009 when a company was set up in only 18 minutes.<sup>181</sup>

Although Estonia is a small country, it has had significant impact on the development of interoperable solutions. Several inventions originating from Estonia have successfully crossed the country's borders already and contributed to its **economy's development** and growth.

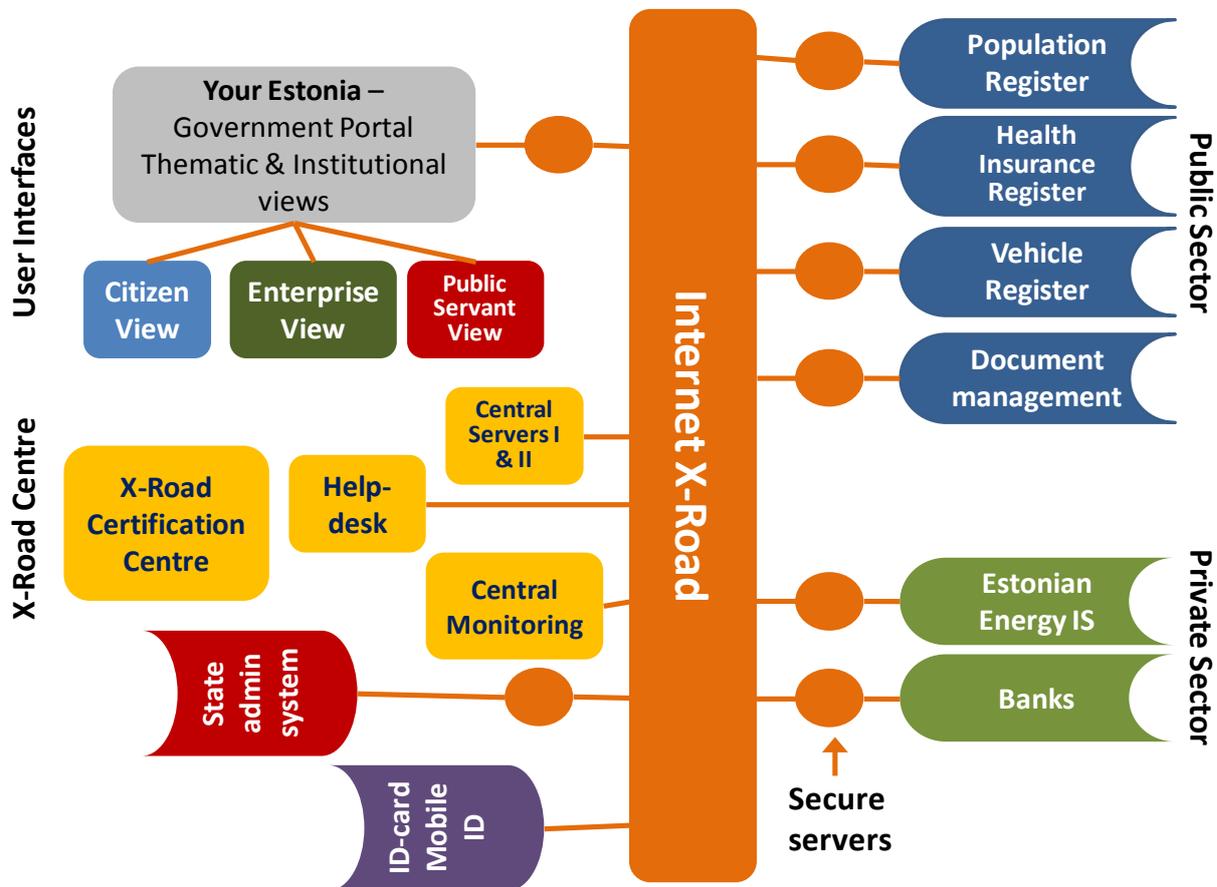
#### **a. The X-Road data exchange layer**

**X-Road** is the **backbone of e-Estonia**. X-Road is used for government data collection, storage and transfer of administrative documents, administrative services such as

<sup>181</sup> <https://e-estonia.com/component/e-business-register/>, accessed : 4 November 2015.

residency or car registration, e-tax payments, access of education certificates etc. A brilliant 2-minute video explaining X-Road can be accessed at: <http://cyber.ee/en/e-government/x-road/>, a graphical illustration is provided below.

**Figure 23: An illustration of X-Road: Estonian Information System**



**Note:** the diagram is illustrative and does not include all elements of X-Road

**Source:** London Economics, based on Cybernetica (2013). X-Road eGovernment interoperability framework [http://cyber.ee/uploads/2013/03/cyber\\_xroad\\_NEW2\\_A4\\_web.pdf](http://cyber.ee/uploads/2013/03/cyber_xroad_NEW2_A4_web.pdf), [accessed 25 September 2015].

X-Road functions in a decentralised way such that **services and documents may be added independently** as they are ready to use. The key to its interoperability is that anyone can connect to the system if some minimal requirements are satisfied. A virtual physical secure server and a local monitoring system must be used. In addition, if a service uses its own information system, an **adapter service** must be developed. Adapter services translate documents from a specific IS to a general, portable format on the main X-Road infrastructure. These services function in analogy to world adapters for electrical appliances.

Once the data is translated into portable format, it passes a **security server** to enter the system fully. The security servers use the same standards across services to ensure reliability, **safety and trust into the system**. Once data is fed into the system, it is, in theory, accessible by all other services.

**Data protection** is a priority in the Estonian system. Therefore, any service provider and any **citizen may fully control with whom their information is shared**. Hence, while full data exchange is technically possible, it can equally easily be restricted for security and privacy reasons.

The central part of the system is the **X-Road centre** which serves as **authentication service and central repository of data flows**. X-Road centre saves a timestamp and a unique authentication code of each piece of information entering the system.<sup>182</sup> This way, origin and authenticity can be verified and retrieved when necessary.

Authentication is ensured mainly through three services: **e-ID, mobile ID, and e-Signature**. Since 2002 every citizen is provided with an e-ID card which may be used to electronically identify as well as to **generate legally binding electronic signatures**. e-ID cards function via a **small device** which is commonly handed out through banks in Estonia.

Data is shared under a **'once-only'** approach within X-Road. The approach ensures that citizens need to enter the same type of data only once. If the same information is required for another service, it can be **automatically retrieved** from the system. For citizens it means that most administrative **forms are automatically filled in** except for any new information which is required. It not only saves time while filling in forms, it also prevents citizens from consulting several services multiple times if a particular piece of information is not at hand when needed. For public administrations it implies that civil servants no longer need to copy nor cross-check data from several systems. Furthermore, public administrations can receive all data in machine readable form from other administrations, thus **saving costs and time**.

An assessment commissioned by the Estonian government of 15 government services showed that employees and customers of all services felt significant improvements due to the introduction of X-Road and the once-only approach.<sup>183</sup>

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<sup>182</sup> Preatoni, R., (2007) 'The first world's national e-voting session: Estonia once again', available at: <http://www.zone-h.org/news/id/4579>, accessed : 3 November, 2015.

<sup>183</sup> Tarmo Kalvet, Marek Tiits, Hille Hinsberg (editors) (2013). Impact assessment of the Estonian e-government services. Tallinn: Institute of Baltic Studies & Praxis Center for Policy Studies.

**Table 16: Examples of the reductions in transaction costs from e-Estonia**

Service	Example of savings
<b>Electronic tax filing</b>	Estonia has a high take up of electronic tax filing – by 2011 94% of personal income tax filings and 98% of business tax filings used digital channels. This approach is seen as an explanatory factor for the low cost of tax collection in Estonia. In 2011 Estonia had the <b>lowest tax collection cost to tax revenue ratio</b> of 32 OECD countries measured. <sup>184</sup>
<b>Student financial support</b>	<b>Decisions</b> on applications for student financial support are now usually provided <b>within minutes of filing the application</b> . This is because they are processed automatically via the X-Road infrastructure, using information from various government information systems on personal income, parents' income etc. Previously a range of proofs needed to be provided with the application the process took much longer. <sup>185</sup>
<b>e-Business register</b>	All of the administrative requirements for <b>setting up a business</b> in Estonia can be completed online through the <b>e-Business register</b> . In 2009 this was achieved in 18 minutes and was awarded a Guinness World Record for the “fastest time to register a new legal entity”.
<b>Digital signatures</b>	Digital signatures were given the same status as paper-based signatures under Estonian law in 2000. Together with the necessary electronic infrastructure, this has paved the way for many e-Estonia services including i-voting and e-Tax. More than 242 million digital signatures have been made in Estonia since the system became available. <sup>186</sup> E-signatures applied in public administration as well as in private sector operations are estimated to <b>save 2% of GDP</b> yearly. <sup>187</sup>
<b>e-Police</b>	Mobile workstations in police vehicles enable access to a range of databases in addition to the police database, including vehicle, population and weapons registers, as well as the vehicle insurance database. <b>Before X-Road it required 3 policemen and 20 minutes of time</b> to check a vehicle's background. With the X-Road, <b>the same task now only requires 1 policeman and 2 seconds of time</b> . <sup>188</sup>

<sup>184</sup> OECD (2015).<sup>185</sup> OECD (2015).<sup>186</sup> See : <https://e-estonia.com/component/digital-signature/> [Accessed 4 November 2015]<sup>187</sup> Siim Sikkut (2014) 'E-Estonia takes digital government innovation to the next level', available at: <https://www1.oecd.org/governance/observatory-public-sector-innovation/blog/page/e-estoniatakesdigitalgovernmentinnovationtonextlevel.htm>, accessed : 3 November 2015.<sup>188</sup> X-Road Factsheet (2014), available at : [https://www.ria.ee/public/x\\_tee/x-road-factsheet-2014.pdf](https://www.ria.ee/public/x_tee/x-road-factsheet-2014.pdf), accessed : 3 November 2015.

According to e-Estonia, over **50% of inhabitants already used the system in 2013**.<sup>189</sup> Most importantly, due to the decentralised organization, it is **particularly suitable for cross-border operations**. It can be easily expanded and up-scaled within as well as across borders.<sup>190</sup> Finland has for example copied the X-Road system and the two countries are now jointly developing their digital strategies. In 2013, the Prime Ministers of both countries **signed an intergovernmental agreement for the first time digitally**.<sup>191</sup>

In addition to successful e-government solutions, Estonia also has a private-sector export hit - namely **m-parking**. In Estonia, 90% of public parking is paid via mobile phones. M-parking was developed by a private company, and is already diffused in other EU and non-EU countries (see the Box below for further details).

### Box 2: m-parking



**m-parking** is a system that allows citizens to pay for parking spots using their mobile phone. The system has proven to be so user-friendly and simple that it is already the most widely used method of payment for parking. Arrival and departure are registered by sending an SMS to the provider indicating a code that identifies the parking position. The police may cross-check the license plate and parking validity using the same system.

The system has been successfully exported to other EU and non-EU countries (e.g. the US, Canada, Austria, Sweden and Dubai).

**Sources:** <https://e-estonia.com/component/m-parking/>, "Top 5 Technology Transfers from e-Estonia", March 2013. <https://e-estonia.com/top-5-technology-transfers-e-estonia/>, [both accessed 25 September 2015].

## 4.6. EU-level e-government solutions and tools

### 4.6.1. Comparing e-government solutions in Estonia and at the EU level

Many EU countries already have **good e-government solutions** in place.<sup>192</sup> Many EU countries are among the leaders in the UN e-Government Development Index.<sup>193</sup> However,

<sup>189</sup> "Top 5 Technology Transfers from e-Estonia", March 2013. <https://e-estonia.com/top-5-technology-transfers-e-estonia/>, accessed: 3 September 2015.

<sup>190</sup> OECD (2015) 'OECD Public Governance Reviews: Estonia - Fostering Strategic Capacity across Governments and Digital Services across Borders', available at: <http://www.oecd.org/gov/key-findings-estonia.pdf>, accessed: 3 November 2015.

<sup>191</sup> Republic of Estonia (2013) 'Finland to create a data exchange layer on the example of the Estonian X-Road', available at: <https://www.ria.ee/finland-to-create-a-data-exchange-layer-on-the-example-of-the-estonian-x-road/>, accessed: 3 November 2015.

<sup>192</sup> See also the discussion in Chapter 3 of current initiatives: e-ID, e-procurement, and customs code reform.

<sup>193</sup> United Nations (2014), 'United Nations E-Government Survey', [http://unpan3.un.org/egovkb/Portals/egovkb/Documents/un/2014-Survey/E-Gov\\_Complete\\_Survey-2014.pdf](http://unpan3.un.org/egovkb/Portals/egovkb/Documents/un/2014-Survey/E-Gov_Complete_Survey-2014.pdf), accessed: 3 November 2015.

most services are implemented merely on the **national level and do not function across borders**.<sup>194</sup> There is a risk that this development of national solutions will lead to new barriers to trade by increasing the costs of cross-border trade as companies have to understand and register on a multiplicity of different e-Government solutions using different approaches and standards (e.g. for e-authentication and e-signatures). Hence, the biggest challenge to further exploit electronic solutions with respect to reducing barriers in the Single Market is to **integrate them into a cross-country functioning system**.

As part of the EU e-Government Action Plan 2011-2015 the e-SENS project aims to integrate the previous Large Scale Pilots (LSPs) which are looking for interoperable solutions in e-ID, e-signature etc. At its core stands the **development of an interoperability layer, called e-Delivery**.<sup>195</sup> The system resembles the Estonian X-Road in many ways and we show the similarities and differences in detail further below (Figure 24: e-Government in Estonia and at the EU level).

The introduction of such an interoperability layer is likely to decrease administrative burdens to public administrations, citizens and companies alike. It is furthermore a key facilitator of cross-border interoperability and thus of **cross-border e-government services**. The use of a **unifying authentication system** allowing for identification of citizens and companies, as well as for **electronic signatures**, would reduce red-tape. Going paperless for all exchange between companies, citizens and public administration would yield **large savings in cost and time**.<sup>196</sup> Currently, lead times in public administration are dominated by physical transportation and by civil servants needing to manually certify documents. It can take months until a certificate is authenticated and sent to the person who requested it. In a paperless system with secure authentication, such processes would only take seconds and be fully automated. Estonia estimates its current savings in administrative costs from the use of digital signatures amounts to 2% of GDP every year.<sup>197</sup> These estimates only consider cost savings in public administration. Therefore overall savings, including efficiency gains in the private sector, are likely to be significantly larger, though reliable estimates in this regard do not exist.

Figure 24 overleaf showcases the current state of e-government operations in Estonia and compares it to current states and developments in progress in the EU at large. According to Van Veenstra et al. 2013 and statements of Van Veenstra at a recent EU workshop on the Building Blocks of the Ubiquitous Digital Single Market in 2015<sup>198</sup>, cross-border e-government solutions are still absent. But important steps are being taken towards a developing and promoting a wide-spread exploitation of ubiquitous services.

The left hand side of Figure 24 shows a simplified version of X-Road shown in Figure 23. The right hand side shows an adaptation of e-discovery to fit into the existing structures of X-Road. Public and private services as well as domestic and foreign citizens wishing to gain access to information in the system are represented in blue. In the Estonian system there are adapter services which translate documents into a portable format before passing them through a security server into the main system. In the EU system both functions will

<sup>194</sup> European Parliament (2013) written by Van Veenstra et al. 2013, 'Ubiquitous Developments of the Digital Single Market', p. 115

<sup>195</sup> [www.esens.eu](http://www.esens.eu)

<sup>196</sup> Examples of savings in Estonia and South Korea are provided in Chapter 4.

<sup>197</sup> Siim Sikkut (2014) 'E-Estonia takes digital government innovation to the next level', available at : <https://www1.oecd.org/governance/observatory-public-sector-innovation/blog/page/e-estoniatakesdigitalgovernmentinnovationtonextlevel.htm>, accessed : 3 November 2015.

<sup>198</sup> European Parliament (2015) 'Building Blocks of the Ubiquitous Digital Single Market - Proceedings of the Workshop', available at : [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/518772/IPOL\\_STU\(2015\)518772\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/518772/IPOL_STU(2015)518772_EN.pdf), accessed : 3 November, 2015.

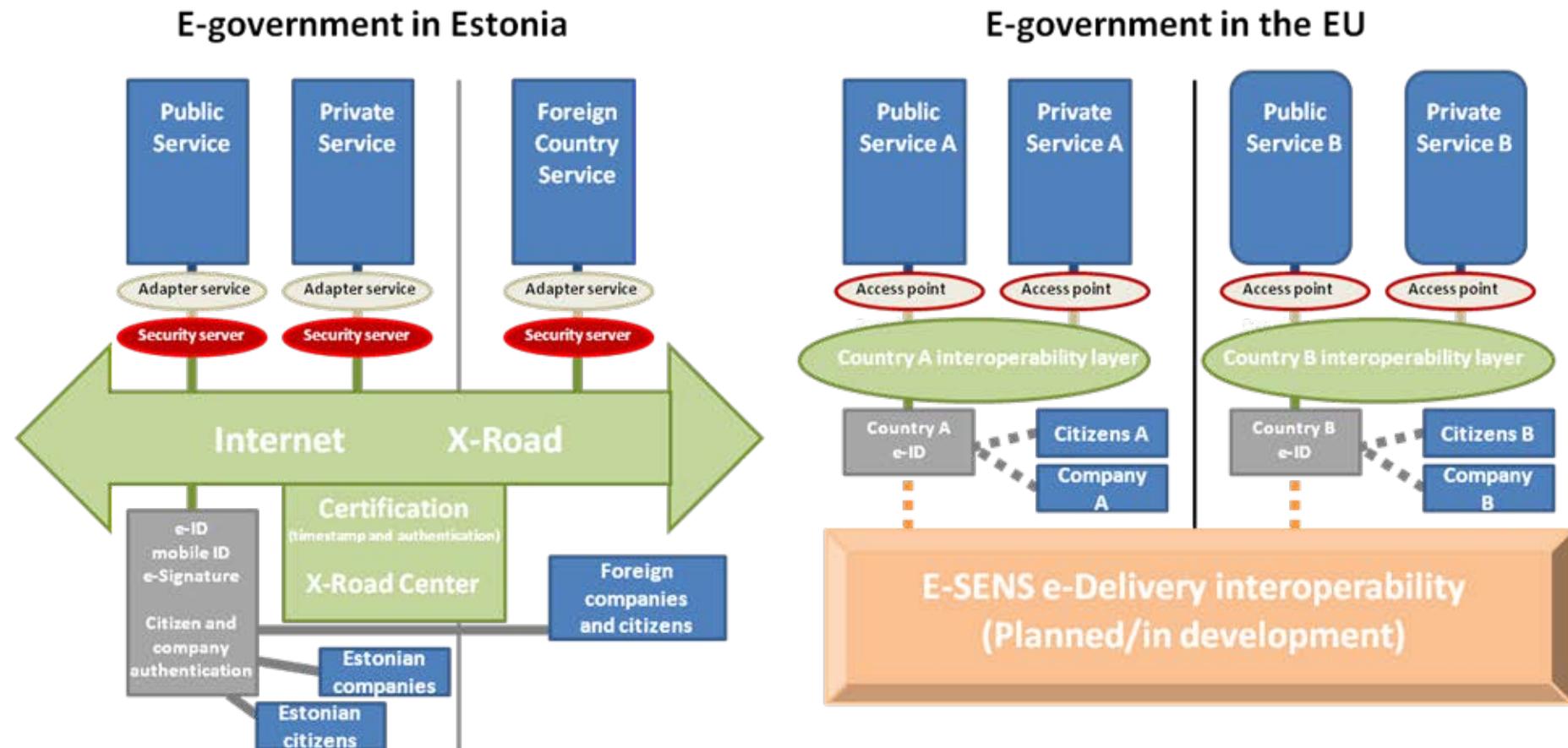
fulfilled by access points. These access points are going to play an important role in converting national systems into interoperable ones.

The **Estonian system** is in many ways **already accessible across its borders**. Foreign companies can acquire an Estonian unique identifier and thus offer and access services within the X-Road. Currently companies from Portugal, Finland, Belgium and Lithuania can already access the system.<sup>199</sup> All data flows are authenticated and time stamped through the X-Road centre which certifies **authenticity** through **e-ID, mobile ID** and **e-Signature**. In the EU, currently only national standards for authentication exist and electronic identification services are not yet interoperable. The dotted lines leading from the national interoperability layers towards the European interoperability layer, e-Delivery, will aim at granting authentication across borders.

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<sup>199</sup> <https://e-estonia.com/component/e-business-register/>, accessed : 4 November 2015.

Figure 24: e-Government in Estonia and at the EU level



**Estonia:** Through a universally accepted e-ID and e-signature, domestic and foreign citizens, service providers and companies may equally access and introduce data within the interoperability layer (X-Road).

**Current state and projects in other EU countries:** Only few other EU countries have complete and operable e-ID systems for citizens (and companies). A unifying interoperability layer (e-Delivery) is in development under the e-SENS project which integrates the previous large scale pilots (LSP). Dotted lines stand for links which are planned but currently not functioning.

**Source:** London Economics based on Estonian Information Systems Authority (2013) 'X-Road', available at: [https://www.ria.ee/public/x\\_tee/xRoadOverview.pdf](https://www.ria.ee/public/x_tee/xRoadOverview.pdf), and E-SENS e-Delivery, available at: <http://www.esens.eu/technical-solutions/e-sens-technical-solutions/e-delivery/>, accessed : 3 November, 2015.

Without formal assessments, it is difficult to make arguments about specific costs and benefits of a fully integrated electronic administration. The improvements in service quality and accessibility in Estonia are remarkable.<sup>200</sup> Efficiency gains could be even larger in an EU-wide system. The most important drivers of cost are likely to be linked to the distribution of e-ID cards, card readers (although they are likely to be integrated in mobile phones), and the security assurance of the interoperability layer. e-SENS has a 3-year funding of € 27 million of which half comes from EU funds.<sup>201</sup>

#### 4.6.2. Existing EU e-government tools

A range of pan-EU tools and solutions already exist. These are mainly **assistance websites** which help citizens and businesses in solving cross-border problems of various kinds. While these services appear to be quite efficient, their usefulness would be enhanced if their **visibility and accessibility** were increased.

Citizens and local businesses searching the web for solutions seem to be **automatically directed to numerous national websites** of ministries, administrations, or chambers of commerce providing **useful intra-border but not cross-border information**. Furthermore, national information packages do not seem to link to the pan-EU websites in intuitive or automatic ways. Finding cross-border solutions is thus a highly complex task. The lack of visibility is confirmed by several qualitative and quantitative assessments. Interviews conducted by London Economics (2013a, 2015), the Centre for Strategy and Evaluation Services in 2011,<sup>202</sup> as well as a 2011 survey conducted by the European Business Test Panel unanimously show that the assistance tools are not known amongst their target populations.

In the following, we discuss three tools that merit particular attention with respect to their services to the Single Market: SOLVIT, Your Europe Advice, and Enterprise Europe Network.

#### 4.6.3. SOLVIT

SOLVIT is a free of charge, mostly online service from national administrations in EU member states, Iceland, Liechtenstein and Norway offering help in **solving problems occurring between two countries**. Assistance is offered in solving problems related to the application of EU laws and regulations, as well as to the harmonization of national with EU laws. **SOLVIT helps businesses as well as individuals**. There are SOLVIT assistance centres in every member state. Putting forward a legal case through SOLVIT can often be faster and more efficient than proceeding with a formal complaint to the European Commission.<sup>203</sup> If a case is unsuccessful through SOLVIT formal complaints may still be filed. The two concerned countries cooperate to solve the problem within 10 weeks from receiving the case.<sup>204</sup>

Practice areas include:

- recognition of professional qualifications,
- Visa & residence rights
- Trade & services (businesses)

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<sup>200</sup> Tarmo Kalvet, Marek Tiits, Hille Hinsberg (editors) (2013). Impact assessment of the Estonian e-government services. Tallinn: Institute of Baltic Studies & Praxis Center for Policy Studies.

<sup>201</sup> <http://www.esens.eu/about-the-project/>, accessed : 4 November 2015.

<sup>202</sup> Centre for Strategy and Evaluation Services (2011b)

<sup>203</sup> [http://ec.europa.eu/atwork/applying-eu-law/complaints\\_en.htm](http://ec.europa.eu/atwork/applying-eu-law/complaints_en.htm), [Accessed 4 November 2015].

<sup>204</sup> [http://ec.europa.eu/solvit/how-solvit-works/index\\_en.htm](http://ec.europa.eu/solvit/how-solvit-works/index_en.htm), [Accessed 1 September 2015].

- Vehicles & driving licences
- Family benefits
- Pension rights
- Working abroad
- Unemployment benefits
- Health insurance
- Access to education
- Cross-border movement of capital or payments
- VAT refunds.
- Discrimination

#### Examples of cases:

After SOLVIT's intervention of harmonising national French with EU laws a **Swedish manufacturer** of mobile cleaning pumps for swimming pools could **start selling his products in France**.

Following a complaint from a **Norwegian fertilizer carrier**, SOLVIT managed to persuade **UK harbour authorities** to **change their tariffs** such that Norwegian (EEA) vessels would no longer be charged above EU standard rates.

SOLVIT regularly helps **speed up processes** of the recognition of professional qualifications in order for EU citizens to practise their profession abroad.

#### 4.6.4. Your Europe Advice

Your Europe Advice is a team of **independent legal experts** who help individuals of the EU, Iceland, Liechtenstein and Norway, non-EU family members, and EU businesses with cross-national issues related to EU law.

#### Examples of cases:

An **Austrian** holding a **UK diploma** as a dental technician is told he cannot **set up his business in Austria**. Your Europe Advice tells him about the relevant formalities and the documents to be produced, and directs him to the Austrian authority that can help him further.

YEA helped when a British citizen was having difficulties applying for a Schengen visa for her non-EU spouse.<sup>205</sup>

#### 4.6.5. Enterprise Europe Network

The Network helps small and medium-sized enterprises (SMEs) make the most of business opportunities in the EU and beyond. The around 600 member organisations in more than 50 countries include chambers of commerce and industry, technology centres, research institutes and development agencies. Enterprise Europe Network's mission is to empower European SMEs to enhance growth and job creation in the EU Single Market.<sup>206</sup>

#### Examples of cases:

<sup>205</sup> [http://europa.eu/youreurope/advice/index\\_en.htm](http://europa.eu/youreurope/advice/index_en.htm), [Accessed 1 September 2015].

<sup>206</sup> <http://een.ec.europa.eu/about/about>, [Accessed 1 September 2015].

Through contacts at an **Italian chamber of commerce** and the **Federation of Industries of Northern Greece** in Thessaloniki the Italian company Rossato **partnered up** with the local Greek Lennik to help sell the Italian energy-saving heating and cooling systems in Greece.

A Polish SME specialised in electrical installations operating close to the German border wanted to expand across the border but lacked knowledge about Germany's public procurement procedures. Through his local Enterprise Europe Network branch, the entrepreneur gained access to a specific **training course** and now **operates as the first Polish company certified in Germany**.<sup>207</sup>

#### 4.6.6. Making use of information from the existing EU e-government tools

**Information about enquiries, complaints and barriers** derived from tools such as SOLVIT, Your Europe Advice and Enterprise Europe Network is a potentially very **valuable input to Single Market policy-making**. That information can provide a basis for specific actions to address barriers to the Single Market.

There are already examples of actions being taken on the basis of this type of information, but **more systematic and transparent use of this information** needs to be developed.<sup>208</sup> In addition to providing a basis for direct policy action it could also provide a **basis on which citizens and businesses can take action** in the courts.

#### 4.7. Lessons to be drawn from international and EU experiences

E-government solutions can **increase efficiency in public administration** while increasing transparency for citizens and businesses in their interactions with administration.

Wide coverage of **broadband** in-home services and **high-speed mobile network connection** are the necessary conditions for the effective use of u-services. While a low-speed connection might be sufficient in itself to access administrative services online, it is necessary for private users to be familiar with the internet in a broader sense.

##### 4.7.1. Familiarity with the internet

The most successful and most popular private services on the internet are best accessed and enjoyed using a high-speed connection. And it is such casual use which gets users to become **acquainted with the internet**. Without the internet being a familiar environment in the everyday life, users are unlikely to turn to it for administrative questions. Finally, if users are accustomed to high-speed non-government services, they likely expect the same standards from e-government; otherwise they might quickly turn away from its use.

Internet users nowadays make heavy use of **search engines**. Search engines collect data from the whole of the internet following their own **de-centralized algorithms**. They thus make meta-websites, which try to centrally collect information, redundant. A decentralised system such as **X-Road of e-Estonia** which may continuously evolve and be extended appears more **appropriate for interoperability** while optimizing user experience.

Such arguments should also be kept in mind when thinking about the extension or **integration of e-government tools** such as Your Europe Advice, SOLVIT, and Enterprise Europe Network. One gets the impression that these services are trying to centralize information. Instead it might be more useful to organize information through **content platforms** (in the style of Wikipedia). Such platforms, similar to the X-Road system, can be extended and accessed by the users directly and thus grow continuously without a

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<sup>207</sup> <http://een.ec.europa.eu/success-stories/laying-strong-foundations-growth>, [Accessed 25 September 2015].

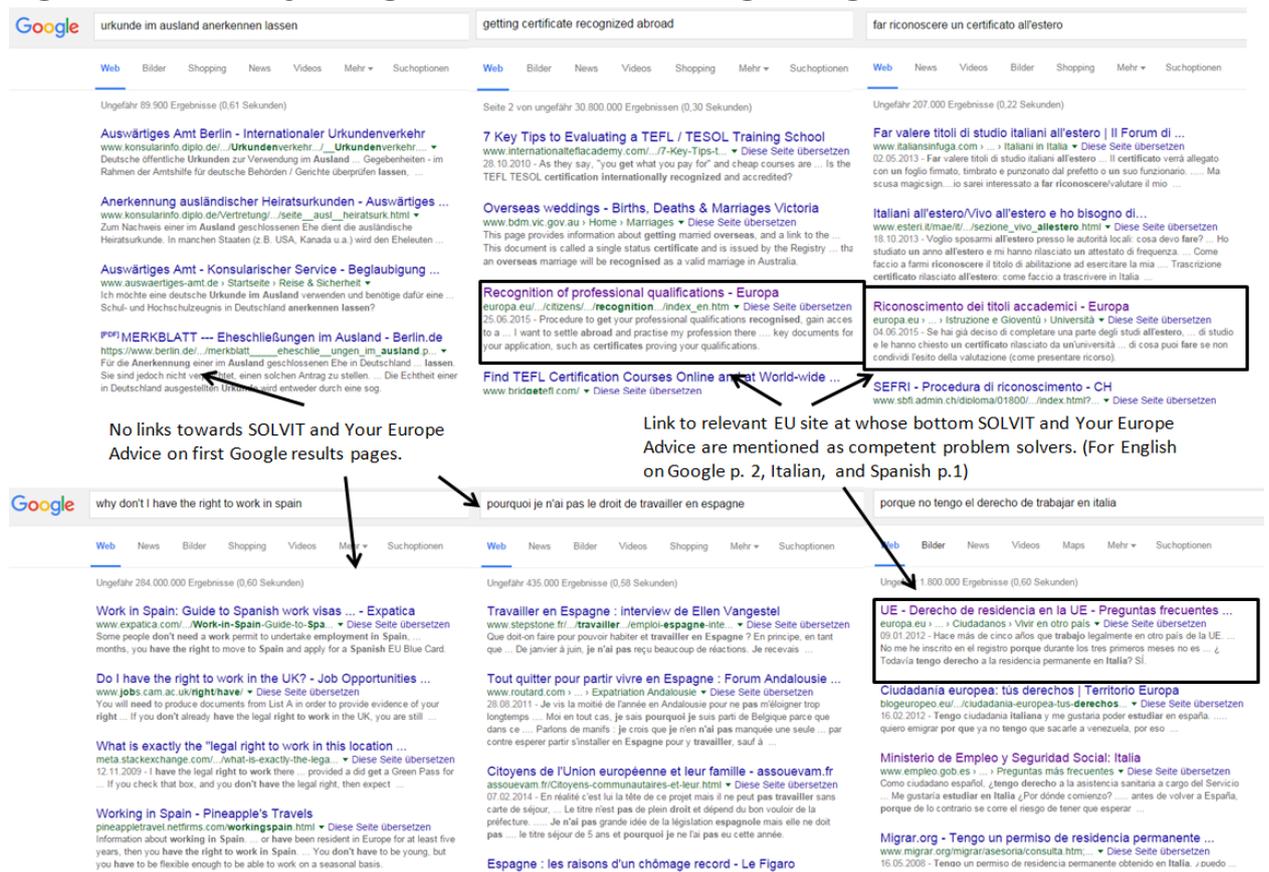
<sup>208</sup> London Economics (2015).

centralized motor. Such initiatives should be implemented while **maximizing visibility** on search engines.<sup>209</sup>

Search engines are the most common path of access to these tools. According to a recent study by London Economics between 30-50% of individuals using any of the above tools accessed them via online search.<sup>210</sup> Unfortunately, their overall **visibility** on search engines is rather **low**.

Surveys showed that only 1-7% of the target audiences were actually aware of its existence.<sup>211</sup> Moreover, an exploratory visibility check using Google (Figure 13) showed that the services of SOLVIT and Your Europe Advice are **more easily accessed** if a search is carried out **in Italian or Spanish**, than they are for example in English, German, or French.<sup>212</sup> Quick fixes to the existing services might be attained through **Search Engine Optimization**, and more user friendly layouts of the websites.

**Figure 25: Visibility of e-government tools through Google Search**



Source: Google.com, London Economics.

<sup>209</sup> Also see London Economics (2013c), 'An Assessment of Open to Export' for an assessment of an open-source networking website for business.

<sup>210</sup> London Economics (2015).

<sup>211</sup> London Economics (2015).

<sup>212</sup> We searched on Google for "getting certificate recognized abroad" and "why aren't I allowed to work in Spain" in English, German, Italian, French, and Spanish and monitored the quickest link to SOLVIT and Your Europe Advice.

#### 4.7.2. Cross-border discrimination in e-commerce

Shulte-Nolke et al (2013)<sup>213</sup> describe a wide range of practices that suggest that various forms of discrimination exist for consumers wishing to take part in cross-border e-commerce. These include online sellers **operating only in certain countries**; having **different product lists** in different countries; having **different terms and conditions**, including **prices**, in different countries; and **automatically redirecting customers** from particular countries to satellite sales websites without their consent. Some of these practices are also sometimes known as 'geo-blocking'.

Consumer trust may also be another inhibiting factor. 61% of EU consumers feel confident about purchasing online from businesses located in their own country whilst **only 38% feel confident about purchasing online from another Member State**.<sup>214</sup> The European Commission has estimated that **EU consumers could save almost €12bn per annum** if they could choose from a full range of EU goods and services when shopping online.<sup>215</sup> It has also been estimated that when businesses sell to consumers in other EU Member States they experience costs, due to only **contract law differences** between Member States, in the range **€4bn - €8bn**.<sup>216</sup> Other factors which impose additional costs on businesses making cross-border online sales include **different technical specifications** or **requirement for labelling** and **selling arrangements**. If sellers wish to offer products and services across the EU, they may in some cases need to find and understand 28 different sets of requirements. This imposes a search cost which is an additional barrier in itself.

Existing legislation already provides consumers with some protection from cross-border discrimination. For example, Article 20 of the Services Directive **prohibits discrimination based on nationality or place of residence** for services (including online services) in the absence of objective justifications. Other consumer protection legislation for cross-border online sales also exists - for example, the Consumer Rights Directive (2011/83/EC) has fully harmonised some aspects of consumer and contract law, such as pre-contractual information the customer should receive and the right of withdrawal from the contract. Nevertheless, monitoring of e-commerce websites to check compliance with these requirements suggests **very significant problems with compliance**. The European Commission notes that "On average **60-80% of websites checked are found to be non-compliant** with the most basic pre-contractual information requirements of the EU consumer and e-commerce legislation".<sup>217</sup>

The **Digital Single Market Strategy** recognises cross-border discrimination as a problem that needs to be addressed. It proposes that **unjustified geo-blocking** should be **prohibited** and commits to make legislative proposals to this end in the first half of 2016, suggesting that changes to the e-commerce framework and/or Article 20 of the Services Directive could be proposed. It also commits to **reviewing the Regulation on Consumer Protection Cooperation** that will "clarify and develop the powers of enforcement authorities and improve the coordination of their market monitoring activities and alert mechanisms to detect infringements faster".<sup>218</sup> A clear deadline for this is not articulated,

<sup>213</sup> 'Discrimination of Consumers in the Digital Single Market', Study for European Parliament, Policy Department A. Available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/507456/IPOL-IMCO\\_ET\(2013\)507456\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/507456/IPOL-IMCO_ET(2013)507456_EN.pdf)

<sup>214</sup> European Commission (2015) 'A Digital Single Market Strategy for Europe' COM(2015) 192 final, 6 May 2015.

<sup>215</sup> As above.

<sup>216</sup> European Commission Staff Working Document 'A Digital Single Market Strategy for Europe - Analysis and Evidence' SWD(2015) 100 final, 6 May 2015.

<sup>217</sup> As above, page 15.

<sup>218</sup> European Commission (2015) 'A Digital Single Market Strategy for Europe' COM(2015) 192 final, 6 May 2015.

though the DSM Roadmap suggests that the review will take place in the first half of 2016.<sup>219</sup>

In order to avoid further slow Europe costs, publication of the legislative proposals on prohibiting geo-blocking should be ensured **before 30 June 2016** and legislative proposals to improve enforcement of existing consumer legislation should also be published **before 30 June 2016**. The proposed changes to Regulation on Consumer Protection Cooperation should, in addition to improving monitoring and cooperation mechanisms, propose measures that could **improve the level of compliance**, considering a range of potential options such as **information dissemination** and **penalties for non-compliance**.

#### 4.7.3. e-Government solutions

In the long run it is crucial **to harmonise privacy laws of the Single Digital Market** such that administrations from various countries may collaborate more effectively, making problem-solving platforms hopefully redundant. Until then, it is important to **train staff in national administrations** for effective cooperation between services, to create awareness of assistance tools, as well as clearly define their respective responsibilities in order to minimize duplication. As recommended in London Economics (2015), **capacity building** in order to raise awareness of e-government solutions and Single Market governance tools amongst national and EU level **consumer and business representative organisations** could be a mechanism for improving the awareness of consumers and businesses of the services available to assist them.

Although many EU countries already have **good e-government solutions** in place, most services are implemented at the **national level only**. This development of national solutions could lead to **new trade barriers** by increasing the costs of cross-border trade as companies have to understand and register on a multiplicity of different e-Government solutions using different approaches and standards (e.g. for e-authentication and e-signatures). This means that the biggest challenge to further exploiting electronic solutions with respect to reducing barriers in the Single Market is to **integrate them into a cross-country functioning system**.

We propose the development of an **Action Plan to identify e-Government services that would benefit from coordination at the EU level**. For each candidate service, the costs and benefits of coordination at the EU level should be assessed using an approach consistent with the approaches set out in the Smart Single Market Regulation report. The assessments should consider the costs and benefits for public administrations and for citizens and businesses, including the non-monetised impacts such as time savings. Van Veenstra et al (2013) also proposed a case by case analysis of the benefits of coordination at the EU level. They proposed that the following services would be strong candidates for EU level coordination:

- Identification (e-ID), authentication, and authorisation schemes;
- The European Interoperability Framework (EIF) and related activities;
- eHealth, including (1) exchange of patient data and (2) ePharmacy;
- e-VAT;
- e-Customs.

The European Commission's Digital Market Strategy sets out proposals for a '**Single Digital Gateway**'. Little detail is provided in the Digital Market Strategy, but this would involve extending and integrating existing European Portals (including Your Europe and

<sup>219</sup> See: [https://ec.europa.eu/priorities/sites/beta-political/files/roadmap\\_en.pdf](https://ec.europa.eu/priorities/sites/beta-political/files/roadmap_en.pdf)

Single Points of Contact). More detail on the proposals will be provided in the forthcoming e-Government Action Plan 2016-2020 – it remains to be seen whether these move towards an even more centralised approach to information provision or whether they encourage movement towards a more wiki based system.<sup>220</sup>

Further development of the ideas and mechanisms tested in the Large Scale Pilots that are integrated in the **e-SENS** project is required in order to lead to **concrete actions**. These need to be implemented in a way that integrates with the Single Digital Gateway so that the benefits of e-Government can be realised by a wider range of EU citizens and companies. The forthcoming **EU e-Government Action Plan for 2016 – 2020** is the ideal policy vehicle for taking this forward. We propose that measures in the e-Government Action Plan for 2016 – 2020 should include:

- the **development of a firm proposal** for a pan-EU interoperability layer and unified e-authentication system to enable cross-border e-Government services, based on the lessons learned from e-Delivery and from experiences in the Member States;
- the **publication of an assessment** of the potential cost and time savings for citizens, business and administrations from the proposal, as well as the development costs and risks, based on the lessons learned from the Large Scale Pilots and e-Delivery and from experiences in the Member States;
- the **development of a common EU standard** for digital signatures for use in e-Government services and measures to reduce barriers to their use, drawing on experiences in Estonia and elsewhere;
- the **presentation of a proposal** for the Single Digital Gateway that integrates with existing Single Market Government tools, such as SOLVIT and Your Europe, and with the proposed pan-EU interoperability layer for cross-border e-Government services.

The introduction of a common interoperability layer across the EU is likely to decrease administrative burdens to public administrations, citizens and companies alike. It is furthermore a key facilitator of cross-border interoperability and thus of **cross-border e-government services**. The use of a **unifying authentication system** allowing for identification of citizens and companies, as well as for **electronic signatures**, would reduce red-tape. Going paperless for all exchange between companies, citizens and public administration would yield **large savings in cost and time** as illustrated by the experiences of Estonia and South Korea. Currently, lead times in public administration are dominated by physical transportation and by civil servants needing to manually certify documents. It can take months until a certificate is authenticated and sent to the person who requested it. In a paperless system with secure authentication, such processes would only take seconds and be fully automated.

Estonia estimates its current **savings in administrative costs** from the use of digital signatures amounts to **2% of GDP every year**.<sup>221</sup> These estimates only consider cost savings in public administration. Overall savings, including efficiency gains in the private sector, are likely to be significantly larger, though reliable estimates in this regard do not exist. Whilst the basis of the Estonian estimate is unclear, 2% of annual GDP at the EU

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<sup>220</sup> A wiki is a website that allows modification of its content in a collaboration between website users. See <https://en.wikipedia.org/wiki/Wiki>.

<sup>221</sup> Siim Sikkut (2014) 'E-Estonia takes digital government innovation to the next level', available at : <https://www1.oecd.org/governance/observatory-public-sector-innovation/blog/page/e-estoniatakesdigitalgovernmentinnovationtonextlevel.htm>, accessed : 3 November 2015. This source provides no detail about how this figure was estimated, including the baseline against which the 2% GDP increase was assessed.

level would be worth about €270 billion.<sup>222</sup> The extent to which this level of cost reduction could be available at the EU level depends on a range of factors, including how the current use of digital signatures in e-Government in other countries compares to the baseline for the Estonian estimate. It is important to remember that this estimate does not include the cost savings potentially available from other e-Government innovations and neither does it include the potentially bigger savings to citizens and businesses.

More generally, regulatory initiatives should display greater ambition when it comes to reducing the barriers and costs faced by businesses in the Single Market. **Minimal, possibly zero compliance costs for SMEs should be seen as a realistic target.** Regulatory burdens should in general be shifted onto the administration. This is likely to be economically efficient in the short term due to economies of scale and in the longer term by freeing firms to divert resources to productivity enhancement and innovation. Modern ICT solutions are likely to greatly facilitate this approach. An example of this approach can be found in the **automated compliance system for VAT** that was proposed in the study on modernisation and simplification of VAT: an SME would simply inform the administration if a transaction has taken place and it would be administration's responsibility to ascertain administrative and tax compliance. Note that this requires a move to electronic payment and automated information sharing with the administration. The current initiatives for VAT reform and customs reform are promising testbeds for such an approach.

A more ambitious approach could involve the transformation of the existing e-government platforms into a mechanism to reduce business costs and market barriers by proactively using the information they generate for strategic programming and responding to issues as they arise (and are notified by the users of the tools in question). More ambitious still would be the use of ICT tools as parts of a compliance-based regulatory approach. This would seem to involve almost a reversal of roles, where administrations, rather than reacting to complaints/issues raised by businesses, use these channels to flag behaviour that is incompatible with the Single Market and communicate this to businesses.

#### 4.7.4. Labour mobility

Last but not least, u-services are also very likely to **positively impact labour mobility** in the European Single Market allowing for further efficiency gains. The reduction of barriers to the European labour market is especially important due to the ongoing demographic change which will increasingly trigger labour shortages especially in the market for skilled workers.

According to the OECD, **cross-border mobility** in the Single Market is still below its potential. This is also due to policy-induced barriers such as the risk of losing pension entitlements, difficulties in **recognition of qualifications** etc.<sup>223</sup> Facilitating the exchange of administrative documents and the diffusion of information might importantly reduce processing times, and increase accessibility of the integrated labour market. Some of these benefits are already visible through the work of SOLVIT for example. We recommend that such services are extended while also **integrating feedback mechanisms** into the services to allow **exchange between the users and policy makers** for continuous improvements.

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<sup>222</sup> 2% of €13,528.6 billion, EU GDP current prices in 2013.

Source: [http://ec.europa.eu/economy\\_finance/publications/european\\_economy/2015/pdf/ee1\\_en.pdf](http://ec.europa.eu/economy_finance/publications/european_economy/2015/pdf/ee1_en.pdf) (Table 1.3).

<sup>223</sup> OECD, 2012. 'Mobility and migration in Europe', OECD Economic Surveys: European Union 2012.

## 5. ENGAGING STAKEHOLDERS

### KEY FINDINGS

1. The Commission's Better Regulation agenda is a major commitment to meaningful engagement with citizens and other stakeholders on a large scale on all major policy initiatives.
2. The consultation process is an important guarantor of legitimacy, quality and acceptance of EU-level policymaking.
3. Meaningful consultations can be undertaken as soon as concrete proposals are on the table. This implies that as soon as a proposal is concrete enough for an impact assessment to be conducted, consultations should be undertaken.
4. A key function of the consultation process is to reveal new information to policymakers. Given the important role that initial estimates of costs and benefits can have over subsequent policy discussions, substantive inputs at the impact assessment stage can be of substantial benefit by increasing the amount of information the initial assessment is based on, thus making the evidence base more robust.
5. Consultations serve a different purpose from opinion polls. While it can be useful to understand which stakeholders are represented, there is no requirement for participants to be representative of an underlying population.
6. The current consultation framework, in combination with existing online feedback mechanisms, can be developed into a Persistent Regulatory Evolution and Enforcement Tool, an ongoing information collection and consultation platform set up to collect and aggregate information and make it available for use in enforcement or the continuing legislative reform process.
7. An aspect of the U.S. approach that carries potential lessons for the EU is the obligation on the body proposing the measure under consideration to respond to all substantive arguments raised during the consultation process. This, together with the obligation to ensure that any change to the initial proposals has to be traceable to an item on the public record could improve the transparency and accountability of the EU's policymaking.
8. The design and implementation of consultation tools (including online platforms and notification mechanism) deserve continuous reassessment to ensure meaningful participation.
9. Advanced analytics (social network analysis, text analysis) can be used to assess the representativeness of consultation responses and also reveal deeper insights into the structure and origin of policy views, which can be valuable for decision-makers.

### 5.1. The role of stakeholder consultations in the legislative process

The Treaty of the European Union (Article 11) stipulates that:

- The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
- The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
- The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

The EC is currently obliged to hold consultations on legislative proposals that require an extended impact assessment and that “result in substantial economic, environmental and/or social impact on a specific sector”<sup>224</sup>. Starting from this basis, the EC is committed “to consult more frequently and more effectively, at all stages of the policy-making process”<sup>225</sup>. The consultation process should adhere to the principles of participation, openness, accountability, effectiveness and coherence.

Consultations are conducted in different ways. A basic distinction can be made between ‘closed’ or ‘targeted’ consultations with selected stakeholders, and ‘open’ consultations to which allow all interested parties, including interest groups and individual citizens, to submit responses to consultations online”<sup>226</sup>.

Studies commissioned by the European institutions that contain insights from stakeholder consultations represent a distinct type of targeted consultation, and should be viewed as an additional source of stakeholder insights, even though they exist outside what is commonly seen as the ‘consultation process’ in European policy-making.

As part of the Better Regulation agenda the Commission consults citizens and other stakeholders on a large scale on all major policy initiatives. Consultations are a key component of the Regulatory Fitness and Performance programme (REFIT). Consultations are conducted over the entire life-cycle of a policy.

- Feedback can be provided on ‘Roadmaps’ and ‘Inception Impact Assessments’ at the beginning of the preparation process.
- Depending on the initiative, different types of consultations may be carried out – e.g. targeted or public consultations. Public consultations allow you to express your views on key aspects of impacts assessments for Commission proposals under preparation as well as on key elements of evaluations and ‘fitness checks’ of existing policies. Public consultations are open for a period of minimum 12 weeks by default.
- At the end of the preparation of a new legislative initiative, and after adoption of the draft by the College, feedback can be provided on the Commission proposals (8 weeks after adoption).
- At a later stage it will also be possible to provide feedback on the drafts of delegated acts and important implementing acts (4 weeks).<sup>227</sup>

The ‘minimum standards’ endorsed by the Commission require that:

- the content of consultation is clear;

<sup>224</sup> ‘Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission’. COM/2002/0704 final, Brussels, 11.12.2002.

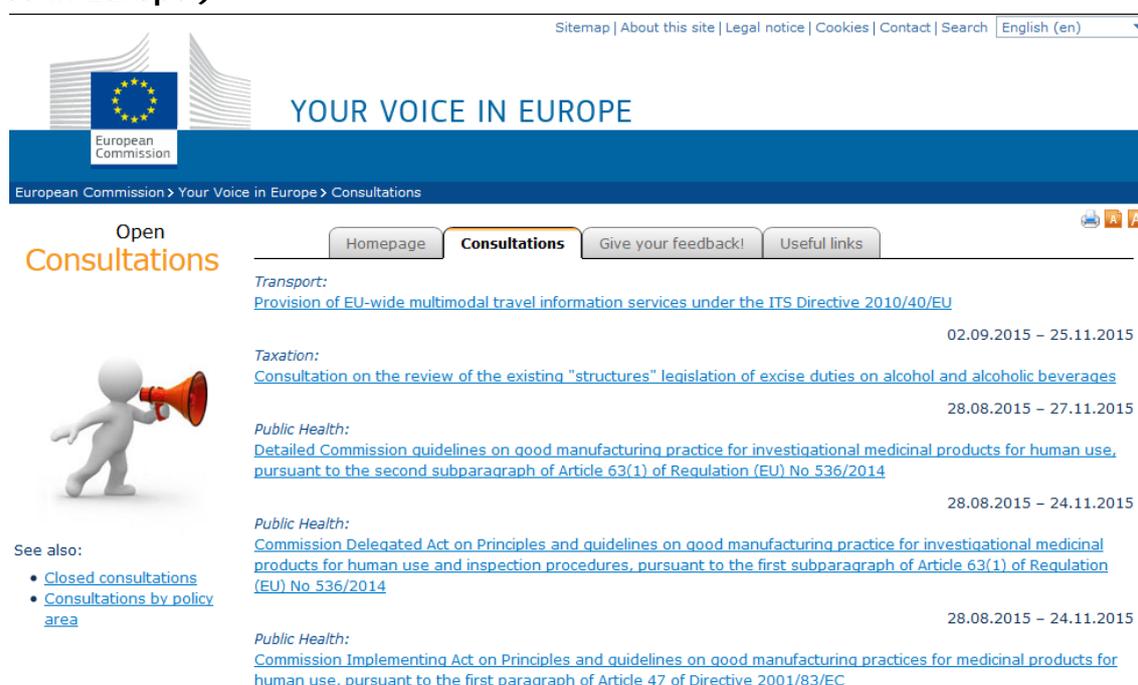
<sup>225</sup> [http://ec.europa.eu/smart-regulation/stakeholder-consultation/index\\_en.htm](http://ec.europa.eu/smart-regulation/stakeholder-consultation/index_en.htm) [accessed 22 September 2015].

<sup>226</sup> Bunea (2015a).

<sup>227</sup> [http://ec.europa.eu/yourvoice/index\\_en.htm](http://ec.europa.eu/yourvoice/index_en.htm), [Accessed 22 September 2015].

- relevant parties have an opportunity to express their opinions;
- the Commission publishes consultations widely in order to meet all target audiences, in particular via the web portal "Your Voice in Europe"<sup>228</sup>, which is the Commission's single access point for consultation;
- participants are given sufficient time for responses (8 weeks – 12 weeks for open public consultations); and
- acknowledgement and adequate feedback is provided<sup>229</sup>.

**Figure 26: The Commission's Single Access Point for public consultations ('Your Voice in Europe')**



**Source:** [http://ec.europa.eu/yourvoice/consultations/index\\_en.htm](http://ec.europa.eu/yourvoice/consultations/index_en.htm) [accessed 08 September 2015]

As an additional transparency measures and to facilitate participation in its consultations, the Commission in 2012 put in place an alert service that informs subscribers about the roadmaps for new initiatives in their fields of interest about one year before their adoption<sup>230</sup>. Subscription to the alert service currently requires registration in the European Transparency Register<sup>231</sup>, which is designed for organisations rather than individual citizens. While other platforms exist where citizens can get information on the legislative initiatives being pursued at the European level (the transparency portal<sup>232</sup>, the European Parliament's legislative observatory<sup>233</sup>), these require a higher level of user engagement.

<sup>228</sup> However, individual DGs still maintain additional stand-alone platforms (e.g. <http://trade.ec.europa.eu/consultations/index.cfm>), with consultations that are duplicated on Your Voice in Europe.

<sup>229</sup> Alemanno, A. (2012). 'Towards More Public Participation in European Policy-Making?'. Available at: <http://www.albertoalemanno.eu/articles/towards-more-public-participation-in-european-policy-making>, [Accessed 08 September 2015].

<sup>230</sup> [http://europa.eu/rapid/press-release\\_IP-12-1\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-1_en.htm?locale=en) [accessed 08 September 2015].

<sup>231</sup> <http://ec.europa.eu/transparencyregister/public/homePage.do> [accessed 08 September 2015].

<sup>232</sup> [http://ec.europa.eu/transparency/index\\_en.htm](http://ec.europa.eu/transparency/index_en.htm) [accessed 08 September 2015].

<sup>233</sup> <http://www.europarl.europa.eu/oeil/home/home.do> [accessed 22 September 2015].

## 5.2. Consultations, cognitive diversity & deliberative democracy

Consultations play an important role in the deliberative model of social choice. The deliberative approach treats belief formation as a cumulative and reasonable process; one in which the individual needs to have the opportunity to think through the facts and values that surround the choice; and, crucially, one in which exposure to other people's reasoning is an important part of arriving at a sound conclusion. The consultation process is therefore an important guarantor of legitimacy for EU-level policymaking and a source of distinct benefits for policymakers:

- a greater likelihood of a good decision: the consultation process invites stakeholders to assemble and weight the facts and values that ought to guide the decision;
- a greater likelihood of understanding and consensus among stakeholders, leading to greater acceptance of the policy outcomes.

The first is a version of the idea of the wisdom of the crowd; by surfacing the beliefs, values, and perspectives of numerous people we are enabled to arrive at a more adequate understanding of the complexities of the problem at hand. The second is a version of Rawls's idea of reflective equilibrium: the idea that citizens will come to a shared understanding of each other's reasoning and to something closer to agreement, by engaging in spirited dialogue with each other. So a political community is one that has engaged in deep and respectful dialogue. And a deliberative community will be a stable community with bonds of civility that sustain it through rancorous issues.<sup>234</sup>

Another perspective sees the very fractiousness of public opinion on policy issues as a benefit of the consultation process. In this view, it is the 'cognitive diversity' that is brought to the surface through public engagement by a variety of stakeholders that enables democratic structures to solve complex problems.

## 5.3. Conditions for effective consultations

The ideal of the public sphere is "a discursive arena that is home to citizen debate, deliberation, agreement and action"<sup>235</sup>, where individuals (and representatives) are able to freely share their views with one another. For this 'ideal speech situation' to occur, members of the public sphere must, according to Habermas, adhere to certain rules, in essence that every subject with the competence to speak and act is allowed to take part in the discourse and no coercion must be applied to prevent them from doing so.

The purpose of the requirements is to allow all interested parties the same opportunity to participate in discourse. It has been observed<sup>236</sup> that virtual spaces may provide the best practical equivalent to the public sphere, which makes open online consultations an especially fit tool, as participants are in principle able to interact on an equal level.

Furthermore, because members of the public sphere are assumed to be rational, the basis for establishing consensus is on the strength of argument, as opposed to power exercised by certain groups.

While the cognitive diversity approach places less emphasis on rationality and consensus<sup>237</sup>, the implications are similar: the participation threshold for open consultations

<sup>234</sup> Little, D. (2009). 'How good is deliberative democracy?' Available at: <http://understandingsociety.blogspot.com/2009/07/how-good-is-deliberative-democracy.htm> [accessed 20 July 2015]

<sup>235</sup> Villa, D. (1992). 'Postmodernism and the Public Sphere'. *American Political Science Review*. 86, p. 712.

<sup>236</sup> Gaynor, D. (1996). 'Democracy in the age of information: a reconception of the public sphere'. <http://faculty.georgetown.edu/bassr/gaynor/idealsp.htm>, [Accessed 22 September 2015].

<sup>237</sup> Essentially Lyotard's doubt that "that a revisable consensus like the one in force at a given moment in the scientific community could embrace the totality of metaprescriptions regulating the totality of statements

needs to be kept as low as possible and that the form of the consultation should enable interested parties (and individuals) to participate as far as possible on an equal footing.<sup>238</sup>

#### 5.4. Evidence on the consultation process in the EU

A range of recent studies<sup>239</sup> examined the functioning of the consultation process currently used in the EU's legislative mechanism.

##### 5.4.1. Effect of consultations on legislative outcomes

Open consultations, especially those that attract a large number of responses, enhance the power of the executive (the Commission) over legislative outcomes. A 2014 study<sup>240</sup> of 54 legislative proposals post 2004 investigated whether the Commission's legislative proposals were reflected in the EU legislative acts that were subsequently adopted. The study found that large, open consultations increase the Commission's bargaining success. In particular, consultations involving more than 150 interest groups have a strong positive effect. Small open consultations (up to 50 organisations) have a weaker effect, while 'closed' (selective) consultations do not have a significant effect on the Commission's bargaining success.

Overall, open consultations are associated with greater bargaining success for the Commission when faced with resistance from the legislative. Consultations are assumed to benefit the executive through the increase in the accuracy of information available and the enhanced claim to legitimacy and technical expertise. The finding suggests that open online consultations can be part of a successful negotiation strategy during EU legislative decision-making.

##### 5.4.2. The role of interest groups

###### a. High vs low salience issues

Interest groups are particularly effective obtaining outcomes that accord with their positions in areas in which there is no widespread or sustained interest.

In the case of high-salience issues<sup>241</sup> that generate significant and sustained interest by large numbers of voters, parties and elected officials find it in their interest to adjust their positions around voter preferences. In the context of "low salience" issues that matter to the interests of high-level business managers and elites, it is possible for these elites to deploy an arsenal of influencing tools that succeed in bringing about their preferred legislative and regulatory outcomes. Most fundamental is an information asymmetry between managers and policy makers.

The more the public cares about an issue, the less interested organisations will be able to exercise disproportionate influence over the rules governing that issue. For the consultation process, this suggests that the salience of a policy area needs to be assessed, and if necessary strengthened ahead of the consultation, in order to ensure that all stakeholders

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circulating in the social collectivity" (Lyotard, 1984), with the implication that the final consensus will often exclude minority opinion.

<sup>238</sup> "(...) both Internet and non-Internet forms of collective cognition will only be able to take full advantage of diversity in conditions of political equality. Without such equality, some voices will dominate, and others be diminished, or silenced". Farrell, H. and Shalizi, C. (2013). 'An Outline of cognitive democracy'. Available at: [www.lapietradialogues.org/area/pubblicazioni/doc000071.pdf](http://www.lapietradialogues.org/area/pubblicazioni/doc000071.pdf).

<sup>239</sup> See the summary in Bunea, A. (2015). 'Research note. Examining the European Commission's open consultations with stakeholders'. Available at: <http://bit.ly/1Vp7x8c> [accessed 20 July 2015].

<sup>240</sup> Bunea, A. and Thomson, R. (2014). 'Consultations with Interest Groups and the Empowerment of Executives: Evidence from the European Union', *Governance: An International Journal of Policy, Administration, and Institutions*.

<sup>241</sup> Culpepper, P. (2010). 'The political salience of an issue refers to its importance to the average voter, relative to other political issues'. *Quiet Politics and Business Power: Corporate Control in Europe and Japan*. Cambridge University Press, p. 4.

affected by the policy issue under consideration are incentivised to make their position known.

### **b. Determinants of interest group participation**

The variation in the extent of interest groups' participation in the European Commission's open consultations is determined by degree of connectedness of the participating organisation in the policy area in question (institutional linkages) as well as its resources, according to a 2014 study of five open consultations on environmental policy issues<sup>242</sup>.

Business organisations participate less frequently in open consultations than since they prefer direct meetings with policymakers. The same effect may explain that having a Brussels office makes an organisation less likely to participate in open consultations.

The key implication of the study is that open consultations help to counter the influence of business over EU policymaking. In particular, open consultations appear to provide a useful engagement channel for organisations with fewer lobbying resources.

### **c. Alignment of interest group positions**

A further study on the formation of positions by interest groups in open consultations<sup>243</sup> finds that linkages between organisations (such as membership in umbrella organisations) lead to an alignment of their positions expressed in the EC's open consultations. More than half of the organisations analysed in the study of five open consultations were found to engage in coordinated lobbying. This is potentially problematic for the consultation process as it negates the 'cognitive diversity' benefit of the open consultation process (as well as being inefficient under the current consultation format<sup>244</sup>).

## **5.5. Lessons from the consultation process in the United States**

The consultation process in the U.S. that bears the closest resemblance to the EU is the process that relates to regulations, rather than primary legislation. The consultation process is governed by the Administrative Procedure Act (APA):

*"Section 553 of the Administrative Procedure Act (APA)<sup>245</sup> requires a federal agency to provide public notice and an opportunity for comment on any proposed rule. The APA definition of 'rule'<sup>246</sup> is broad enough to encompass virtually any agency statement about what regulated parties must or should do in the future."<sup>247</sup>*

This suggests a potentially broader scope than is currently practiced in the EU, and would undoubtedly encompass implementing measures and delegated acts.

The APA requires agencies to request public comment on the text of a proposed rule and any underlying analysis before they proceed to final decisions. In addition, any impact assessments of the proposed rule are made available for public comment online. A key feature of the U.S. approach is the emphasis on the role played by the public record as a tool for policymakers and a guarantor of transparency: "[t]his public comment process not only enables agency regulations and underlying assumptions to be tested through public scrutiny, but also ensures equitable treatment of all potentially affected parties by allowing

<sup>242</sup> Bunea, A. (2014), 'Explaining interest groups' articulation of policy preferences in the European Commission's open consultations. An analysis of the environmental policy area', *Journal of Common Market Studies* 52(6): 1224-1241.

<sup>243</sup> Bunea, A. (2015b), 'Sharing ties and preferences: Stakeholders' position alignments in the European Commission's open consultation', *European Union Politics* 16(2) DOI: 10.1177/1465116514558338

<sup>244</sup> Simple acclamation of consensus positions by affiliated organisations may still be valuable from social choice perspective (majority rule), but seems to be imperfectly implemented in a consultation process.

<sup>245</sup> 5 U.S.C. §553.

<sup>246</sup> 5 U.S.C. §551(4).

<sup>247</sup> Jordan, W. S. III (2010). 'Rulemaking'. *Developments in Administrative Law & Regulatory Practice*, iv.

anyone to provide evidence in the administrative “public record” to support their views or objections to the rule”<sup>248</sup>.

A further key feature of the U.S. approach is the obligation on agencies to explain how the substantive information presented in comments was taken into account. The administrative record—which is publically available and includes the final text of the regulation, any supporting analyses, public comments and agency responses to public comments—is used by the U.S. judiciary in the event there is a legal challenge to a final rule brought by a member of the public.

Consultations are open for 90 days and allow open-ended narrative responses.

No registration or any other information on the respondent is required to submit written (or oral) views to during consultations. Rather, any opinions submitted become part of a public record, and any final rule must stem from that record.

### 5.5.1. Transparency & openness

According to its 2012 communication<sup>249</sup>, the Commission “believes that the processes of administration and policy-making must be visible to the outside world if they are to be understood and have credibility. This is particularly true of the consultation process, which acts as the primary interface with interests in society”.

Enabling citizens and organisations to participate meaningfully in the policymaking process is an issue that has received substantial attention at the highest level political level in the United States in recent years. In 2011 President Obama directed regulatory agencies<sup>250</sup> to base their decisions on “open exchange of information and perspectives” and to promote public participation in Federal rulemaking. The website Regulations.gov was identified as the single gateway for timely public access to regulatory content online.

During the tenure of behavioural scientist Cass Sunstein, the Office of Information and Regulatory Affairs implemented a number of changes to Regulation.gov to improve the usefulness of the site. A relaunch in 2012 added the following improvements<sup>251</sup>:

- Navigation – improved navigation with a simplified homepage.
- Learning – new homepage tabs allow users to browse featured regulations by category and learn about the regulatory process.
- Search – new sorting and filtering functions help change and refine search results.
- Social Media – better connections to Twitter and Facebook, and two-way communication with the public.
- Data Standardisation – consistent use of the Regulation Identifier Number (RIN) and standardized regulatory data and descriptions across Federal agencies.
- Open Data – Application Programming Interfaces (APIs) that allow the app community to link directly to regulatory documents.

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<sup>248</sup> ‘Comments of the United States Government on the European Commission’s Public Consultation Document for Stakeholder Consultation Guidelines 2014’, p. 9.

<sup>249</sup> COM/2002/0704 final

<sup>250</sup> Executive Order 13563. Available at: [www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf](http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf), [Accessed 22 September 2015].

<sup>251</sup> <https://www.govloop.com/community/blog/the-regulations-gov-relaunch/>, [Accessed 22 September 2015].

**Box 3: Application Programming Interfaces (APIs) on Regulation.gov**

“Application Programming Interfaces (APIs) are technical interfaces/tools that allow people to pull regulatory content from Regulations.gov. For most of us, the addition of “APIs” on Regulations.gov doesn’t mean much, but for web managers and experts in the applications community, providing APIs will fundamentally change the way people will be able to interact with public federal regulatory data and content.

The initial APIs will enable developers to pull data out of Regulations.gov, and in future releases, the site will include APIs for receiving comment submissions from other sites. With the addition of APIs, other web sites - ranging from other Government sites to industry associations to public interest groups – will now be able to repurpose publicly-available regulatory information on Regulations.gov, and format this information in unique ways such as mobile apps, analytical tools, “widgets” and “mashups.” We don’t know exactly where this will lead us – technological advances are full of surprises – but we are likely to see major improvements in public understanding and participation in rulemaking.”

*Cass Sunstein, 2012. <https://www.whitehouse.gov/blog/2012/02/21/regulationsgov-remaking-public-participation> [accessed 08 September 2015].*

Further, Sunstein emphasised that "simplicity, clarity, and publicity should be watchwords" of comments solicited for the site<sup>252</sup>. In this context, plain writing is seen as indispensable to achieving the goals of establishing “a system of transparency, public participation, and collaboration”<sup>253</sup>.

**Figure 27: The Regulation.gov website (U.S.)**



**Source:** <http://www.regulations.gov/#!home> [accessed 08 September 2015]

<sup>252</sup> <http://www.fiercegovernmentit.com/story/regulations-gov-ready-facelift/2009-05-12> , [Accessed 22 September 2015].

<sup>253</sup> <http://www.plainlanguage.gov/>, <http://gov20.govfresh.com/plain-writing-is-indispensable-for-open-government/>, <http://gov20.govfresh.com/sunstein-plain-writing-should-be-seen-as-an-essential-part-of-open-government/> [Accessed 08 September 2015].

While differences in the obvious design choices of Regulation.gov compared with Your Voice in Europe are relatively subtle, a few things stand out: the central position of the 'comments due soon', the inclusion of social features ('what's trending', twitter feed) that help to alert stakeholders including individual citizens to consultations of interest and importance, and the prominence of the API option, which encourages creative use of data used in the consultation process by third parties. Regulation.gov also provides an RSS feed that facilitates monitoring of the site for new consultations and other news items. A further interesting feature of Regulation.gov is the "Learn" section, which offers an interactive explanation of the regulatory process<sup>254</sup>.

### 5.5.2. Accountability

The broad understanding of 'rules' (encompassing the whole range of measures that materially affect business and citizens, see above) as well as the nature of the 'public record' that is required (in the sense of a chain of evidence that links proposals, evidence and the final rules that are being implemented) provide the conceptual basis for the accountability mechanism in the U.S. consultation process. In this context, two formal requirements of the U.S. consultation process stand out:

First, the commitment to consulting on sufficiently detailed and advanced proposals (and associated evidence). The usefulness of open public consultations is critically dependent on the extent and quality of information provided to the public. Consultation documents must therefore be "both sufficiently detailed and advanced to enable members of the public to ground their comments on specific solutions (rather than on broad policy options)."<sup>255</sup>

Secondly, accountability is further strengthened by the obligation on regulatory bodies to respond to all *substantive* contributions and the requirement that all consultation responses become part of the public and administrative record (which is then available for subsequent consideration and deeper understanding by other branches of government, as well as the general public<sup>256</sup>).

An additional noteworthy element of the U.S. approach is the preference for an open-ended format for consultations (free text without length limits, rather than closed-form questionnaires)<sup>257</sup>, which is related to the view that the main function of consultations for the rulemaking bodies is discovery of substantive new information to inform the rulemaking process.

### 5.6. Social network theory and stakeholder analyses

The regulatory 'rulemaking' that is the subject of the U.S. consultation process is distinct from the legislative process, which is played out in the deliberations of the elected representatives in Congress and where democratic legitimacy is a paramount consideration. The European Parliament as the elected body among the European institutions has interests related to democratic legitimacy and representation that are different from the U.S. consultation process. Quantitative and qualitative tools for stakeholder analysis can help to identify and effectively manage relevant interest groups and provide additional valuable information about stakeholder positions and engagement levels (including salience, see above) that can inform the policymaking process.

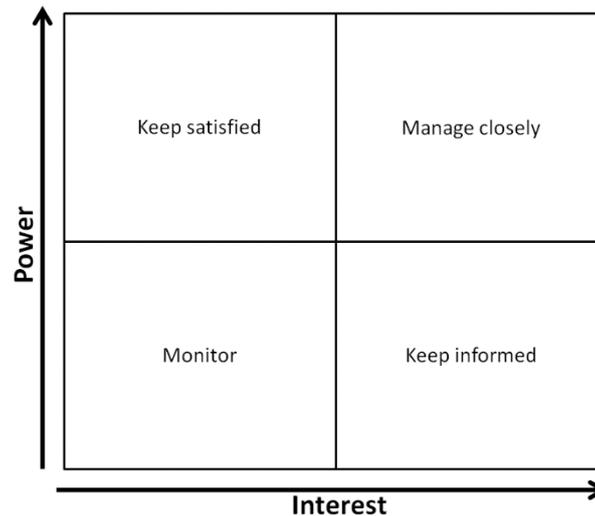
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<sup>254</sup> Sunstein, C. (2012) 'Regulations.gov: Remaking Public Participation' Available at: <https://www.whitehouse.gov/blog/2012/02/21/regulationsgov-remaking-public-participation> [Accessed 22 September 2015].

<sup>255</sup> 'Comments of the United States Government on the European Commission's Public Consultation Document for Stakeholder Consultation Guidelines 2014', p. 9

<sup>256</sup> Ibid., p. 5.

<sup>257</sup> Ibid., p. 11.



Basic stakeholder analysis entails a mapping of all parties involved in a project according to their perceived interests and their influence on the project. A first step, which is often an iterative process, identifies interest groups. This may be done using focus groups, interviews, or expert opinions, or simply by categorising the reports received in consultation.

A highly useful complement to basic stakeholder mapping is the application of social network analysis to further quantify relationships.<sup>258</sup> Figure 16 shows key concepts on which social networks rely. It is important to understand the interconnectivity of different stakeholders and their relationships in to allocate resources and evaluate of consultation responses. Some stakeholders may be connected with one another, others may act in isolation. Some links may be categorised as *strong* due to a long history of interactions or large interests at stake, while other links may qualify as *weak* because of novel elements. Furthermore, it needs to be identified who are central players with many connections, and which organizations or individuals resemble each other (homophily) and are thus likely to sustain similar standpoints.

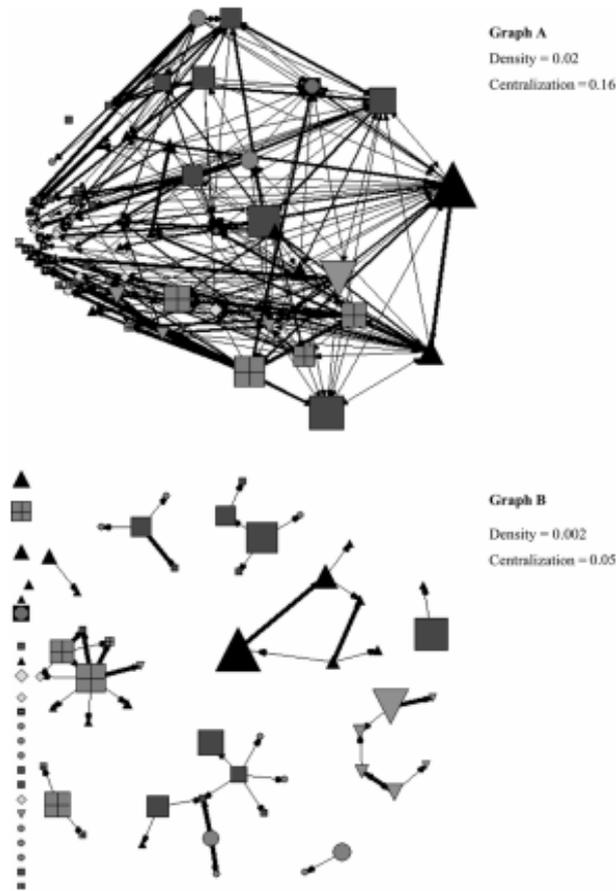
<sup>258</sup> An interesting case study showing the importance of mixing stakeholder analyses with social network analyses can be found in Lienert et al. 2013, "Stakeholder analysis combined with social network analysis provides fine-grained insights into water infrastructure planning processes".

**Figure 28: Basic Network concepts relevant for stakeholder analyses**

Network concept	Effect on resource management
Strong ties	<ul style="list-style-type: none"> <li>+ Good for communicating about and working with complex information</li> <li>+ Hold and maintain trust between actors</li> <li>+ Actors more likely to influence one another's thoughts, views, and behaviors</li> <li>+ Encourage creation and maintenance of norms of trust and reciprocity</li> <li>- Encourage the likelihood that actors sharing strong tie hold redundant information</li> <li>- Actors less likely to be exposed to new ideas and thus may be less innovative</li> <li>- Can constrain actors</li> </ul>
Weak ties	<ul style="list-style-type: none"> <li>+ Tend to bridge across diverse actors and groups</li> <li>+ Connect otherwise disconnected segments of the network together</li> <li>+ Good for communicating about and working with simple tasks</li> <li>+ New information tends to flow through these ties</li> <li>- Not ideal for complex tasks/information</li> <li>- Actors sharing weak ties are less likely to trust one another</li> <li>- Can break more easily</li> </ul>
Homophily	<ul style="list-style-type: none"> <li>+ Shared attributes among social actors reduces conflict, and provide the basis for the transference of tacit, complex information</li> <li>- Can also result in redundant information, i.e., actors have similar backgrounds and therefore similar sources of knowledge</li> </ul>
Centrality	<p><i>Degree centrality:</i></p> <ul style="list-style-type: none"> <li>+ Actors with contacts to many others can be targeted for motivating the network and diffusing information fast through the network, i.e., these are the focal actors in a centralized network</li> <li>- These actors do not necessarily bring together diverse segments of the network</li> <li>- Because of their many ties to others, these ties are often weak ones, thus decreasing influence over others</li> </ul> <p><i>Betweenness centrality:</i></p> <ul style="list-style-type: none"> <li>+ Actors that link across disconnected segments of the network have the most holistic view of the problem</li> <li>+ As with degree centrality, they can mobilize and diffuse information to the larger network</li> <li>- They can feel constrained or torn between two (or more) positions</li> </ul>
Centralization	<ul style="list-style-type: none"> <li>+ As only a few actors hold the majority of ties linking the network together, only need reach these well-connected few to reach entire network</li> <li>- Reliance on only a few is not the optimal structure for purposes of resilience and long-term problem-solving</li> </ul>

**Source:** Prell et al. 2009, "Stakeholder Analysis and Social Network Analysis in Natural Resource Management".

Figure 29 shows two representations of networks which are of very different nature. Graph A is much more centrally organised with most parties being connected to many other parts in the network. Graph B on the other hand consists of many isolated clusters. The engagement strategies required for the two types of stakeholder population are likely to differ, with a more connected population likely to be more responsive to engagement activities targeted at a few key (central) nodes.

**Figure 29: Representation of two social networks of stakeholders.****Figure 2. Two graphs showing social network of stakeholders.**

**Source:** Prell et al. 2009, "Stakeholder Analysis and Social Network Analysis in Natural Resource Management".

### 5.7. 'Big Data' methods to extract substantive contributions

The volume of information created by open consultations can be very large. According to the website of the European Commission it has conducted over 500 open consultations over the last five years via the "Your Voice in Europe" website.<sup>259</sup> Individual consultations can produce many tens of thousands of responses<sup>260</sup>. Analytical tools can be applied to discover, filter and map important arguments, thereby saving administrative resources while increasing transparency and accountability.

Sophisticated text analytics are increasingly common in a forensic setting (e-discovery), to retrieve and catalogue pertinent information. Such tools can identify key topics, retrace their origins, discover and signpost duplicates, and thus massively reduce the volume of information to be processed by research staff. A necessity for applying such software is that all information collected must be available in machine-readable format. Machine-readability is not synonymous with digital content. Documents must not only be retrievable in electronic format, but a computer must be able to read and understand its content<sup>261</sup>. It is only then that semantic tools may operate as depicted below. Already today, such software

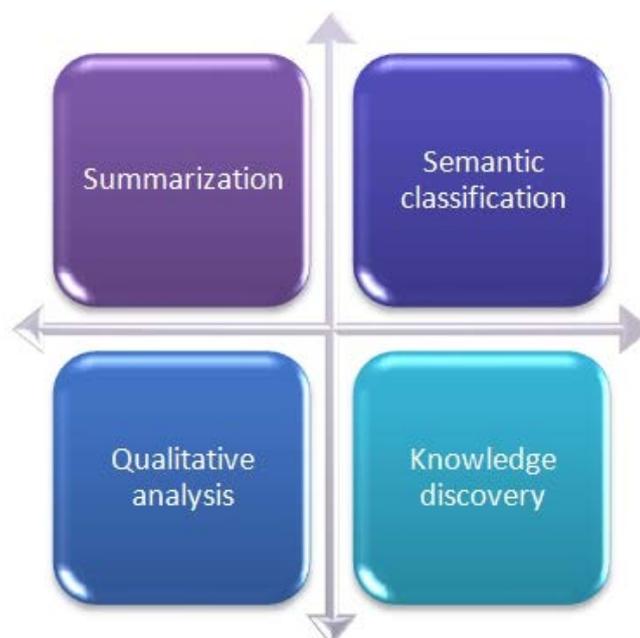
<sup>259</sup> [http://ec.europa.eu/smart-regulation/guidelines/consultation\\_2014/stakeholder-consultation/index\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/consultation_2014/stakeholder-consultation/index_en.htm), [Accessed 8 September 2015].

<sup>260</sup> E.g. over 85,000 in a 2010 consultation on the revision of the Tobacco Products Directive, See Alemanno, A. (2011).

<sup>261</sup> "A Primer on Machine Readability for Online Documents and Data" <https://www.data.gov/developers/blog/primer-machine-readability-online-documents-and-data>, [Accessed 8 September 2015].

is able to group words, identify origins of arguments and follow logical steps in a text, as well as in a string a documents.

**Figure 30 Functioning of High Performance Text Analysis**



Source: [www.semantic-knowledge.com/tropes.htm](http://www.semantic-knowledge.com/tropes.htm) [Accessed 18 September 2015].

## 5.8. Potential modifications of the consultation process

### 5.8.1. Timing and scope of consultations

Meaningful consultations can be undertaken as soon as concrete proposals are on the table, (and no earlier). This implies that as soon as a proposal is concrete enough for an impact assessment to be conducted, consultations should be undertaken.

A lesson that can be taken from the American approach is that a key function of the consultation process is to reveal new information to policymakers. Given the important role that initial estimates of costs and benefits can have over subsequent policy discussions, substantive inputs at the impact assessment stage can be of substantial benefit by increasing the amount of information the initial assessment is based on, thus making the evidence base more robust.

The second aspect of the U.S. approach that carries potential lessons is the obligation on the body proposing the measure under consideration to respond to *all* substantive arguments raised during the consultation process. This, together with the obligation to ensure that any change to the initial proposals has to be traceable to an item on the public record (e.g. a submission made during the consultation process) could improve the transparency and accountability of the EU's policymaking, in particular by making visible the chain of events that link the initial proposals with the measure as it is finally implemented.

### 5.8.2. Design & implementation: ensuring meaningful participation

The consultation process as it is currently constituted makes it very easy for stakeholders who are already well represented in Europe and are accustomed to the legislative processes to participate in open consultations. However, information on the policy programme and upcoming consultations is difficult to locate for stakeholders who are unfamiliar with the

process. By the time a legal initiative has acquired enough publicity to achieve visibility beyond an insider circle (if this happens at all), the consultation period may not be sufficient<sup>262</sup>, especially for parties without resources dedicated to the consultation process, notably SMEs and individual citizens.

Timely automated (advance) alerts seems to be unnecessarily restricted to organisations registered in the EU Transparency Register<sup>263</sup> (which, moreover is not set up to accommodate individual citizens). Options such as email alerts, RSS feeds etc. should be explored to ensure that all interested parties are informed of upcoming consultations as early as possible.

The use of closed-form questionnaires in some of the EC's consultations is a double-edged sword. While undoubtedly facilitating the use of consultation responses by the administration and lowering the cost of submitting a response for stakeholders, the fact that respondents are a self-selected sample (typically from an unknown population) makes the interpretation of aggregated results difficult.

Moreover, an open-ended format consultation format safeguards against questioner bias and allows unanticipated new information to be introduced.

Finally, the design of the European consultation platform (Your Voice in Europe), while clearly incorporating many elements of best practice, is likely to benefit from continuous improvement. Social features, RSS, and the general richness and accessibility of information (including background information, summaries, information on procedure, etc.) should be continually assessed and benchmarked, including against the U.S. site Regulation.gov, which has seen substantial changes following a high-level effort to improve citizen engagement and regulatory rulemaking<sup>264</sup>.

In this regard, the provision of APIs to allow third parties to develop innovative ways of using the information published in the consultation process would represent an investment with uncertain, but potentially great benefits in the future.

### 5.8.3. Ex-post: analysis of consultation responses

Open consultations represent a valuable source of information as well as legislation of public policy. However, depending on the topic at hand, calls for public opinion may trigger large floods of information. Past examples<sup>265</sup> have shown that consultations can be manipulated by interest groups, thereby placing a high administrative burden on the Commission while yielding little in terms of substantive inputs.

Advanced analytics applied to consultation responses has the potential to reduce administrative costs and enhance the value of the information received. Social network analysis of consultation participants and textual analysis of responses (including open-ended text) are two approaches that have shown promise in other fields and could become part of the standard procedure of the consultation process.

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<sup>262</sup> Alemanno (2012).

<sup>263</sup> <http://ec.europa.eu/transparencyregister/public/homePage.do> [accessed 08 September 2015].

<sup>264</sup> Sunstein, C. (2012) 'Regulations.gov: Remaking Public Participation' Available at: <https://www.whitehouse.gov/blog/2012/02/21/regulationsgov-remaking-public-participation>.

<sup>265</sup> See the discussion on the 'Outcome of public consultation on the reform of EU Tobacco Products Directive' By Alemanno, A. (2011), available at: <http://www.albertoalemanno.eu/articles/438107> [accessed 08 September 2015].

## 6. SUMMARY & HIGH-LEVEL RECOMMENDATIONS

Elimination of barriers and costs increases economic efficiency and the welfare of European citizens.

Outcome-focused legislation/regulation should be pursued in accordance with the **Smart Regulation** approach. This requires clear prioritisation of policy actions and enhanced use of information tools.

Ubiquitous ICT solutions are an integral part of this approach. Best practice should be sought and emulated. **Examples of best practice can be found in Estonia and South Korea**, for example.

**EU-level solutions are imperative** to ensure that national level ICT solutions do not create new up new barriers and costs business trading across the EU.

The **monitoring of barriers and costs is piecemeal and unsystematic**, quantification and clear identification of barriers and costs is lacking, which makes prioritisation of policy actions difficult.

Our high level recommendations for legislative and non-legislative actions to address these issues are set out below, starting with the need to provide policy-makers with better information on costs and benefits.

**Table 17: High level recommendations**

No.	Recommendation
1.	Existing Single Market strategies should be amended to include <b>concrete actions and timetables for all initiatives</b> . The timetables should be explicitly linked to impact and cost/barrier assessments and provide a quantification of the cost of slippage (the cost of slow Europe). Actions (such as reviews, analyses, etc.) that do not directly lead to regulatory outcomes should be linked to concrete and timetabled actions.
2.	Development of an <b>Action Plan to identify e-Government services that would benefit from coordination at the EU level</b> . For each candidate service, the costs and benefits of coordination at the EU level should be assessed using an approach consistent with the approaches set out in the Smart Single Market Regulation report.
3.	Further development of the ideas and mechanisms tested in the Large Scale Pilots that are integrated in the <b>e-SENS</b> project is required in order to lead to <b>concrete actions</b> for those services that are assessed as benefitting from coordination at the EU level. We propose that measures in the e-Government Action Plan for 2016 – 2020 should include: <ul style="list-style-type: none"> <li data-bbox="325 1733 1433 1872">e. the <b>development of a firm proposal</b> for a pan-EU interoperability layer and unified e-authentication system to enable cross-border e-Government services, based on the lessons learned from e-Delivery and from experiences in the Member States;</li> <li data-bbox="325 1895 1433 2002">f. the <b>publication of an assessment</b> of the potential cost and time savings for citizens, business and administrations from the proposal, as well as the development costs and risks, based on the lessons learned from the Large</li> </ul>

No.	Recommendation
	<p>Scale Pilots and e-Delivery and from experiences in the Member States;</p> <p>g. the <b>development of a common EU standard</b> for digital signatures for use in e-Government services and measures to reduce barriers to their use, drawing on experiences in Estonia and elsewhere;</p> <p>h. the <b>presentation of a proposal</b> for the Single Digital Gateway that integrates with existing Single Market Government tools, such as SOLVIT and Your Europe, and with the proposed pan-EU interoperability layer for cross-border e-Government services.</p>
4.	<p>Development of an <b>Action Plan to identify services at the EU level where compliance costs for SMEs could be minimised through the use of automated compliance systems (Zero Compliance Costs for SMEs Action Plan)</b>. For each candidate service, the costs and benefits of such an approach should be assessed using an approach consistent with the approaches set out in the Smart Single Market Regulation report. The current initiatives for <b>VAT reform</b> and <b>customs reform</b> are promising testbeds for such an approach.</p> <p>c. Implementation of the supporting IT infrastructure for the Union Customs Code has been delayed until the end of 2020, at a cost of €260bn. The scope for an <b>integrated European customs IT system</b> should be assessed carefully. Such as system, with automated data input based upon administrative data from businesses, may change customs compliance into ex ante system, reduce or largely eliminate the level of human errors or mistakes, reduce costs borne and barriers experienced by businesses, in particular SMEs and lead to a customs sanction system which does not focus on infringements without intent.</p> <p>d. A similar approach could be feasible as part of a <b>common VAT system</b> with harmonization of tax rates and filing of taxes across the EU member states. Such harmonization and simplification is likely to enhance tax incomes by closing the tax gap, while yielding large savings in compliance costs for businesses.</p>
5.	<p>In order to take urgent action against <b>consumer discrimination in cross-border e-commerce</b>:</p> <p>c. publication of the planned legislative proposals on prohibiting <b>geo-blocking</b> should be ensured before 30 June 2016; and</p> <p>d. legislative proposals to <b>improve enforcement</b> of existing consumer legislation should also be published before 30 June 2016. These proposed changes to Regulation on Consumer Protection Cooperation should, in addition to improving <b>monitoring and cooperation mechanisms</b>, propose any measures that could improve the level of compliance, considering a range of potential options such as <b>information dissemination</b> and <b>penalties for non-compliance</b>.</p>
6.	<p>The <b>cost of slow Europe should be given greater visibility</b> to remind policymakers of the cost of delayed action in areas that have already been identified as policy priorities. The cost of slow Europe which arises from the delay between</p>

No.	Recommendation
	<p>initiatives and ultimate impact on the market is very large. If the cost of non-Europe estimates are accurate, the <b>urgency with which action needs to be pursued</b> is absolute.</p>
7.	<p>Initiatives such as the <b>'10 most burdensome EU laws for SMEs'</b> and the assessment by the <b>'High Level Group on Administrative Burdens'</b> should be <b>permanent, methodologically sound and integrated with other information tools</b> in order to provide policymakers with the information necessary to prioritise and tailor actions to complete the Single Market.</p>
8.	<p>A coherent and comprehensive <b>system for collecting and collating information</b> on the costs and barriers to the Single Market needs to be developed and implemented. In order to achieve this, existing <b>information tools</b>, such as SOLVIT, Your Europe Advice, and Enterprise Europe Network should be redefined and linked with other existing tools that collect information about barriers and costs. These include: internal market scoreboards and indicators, petitions, infringement proceedings, compliance data and cases before national courts. A dedicated and frequently updated report on the state of play and progress on the Single Market should be published, based on the information produced by the recommended information system. A study should be undertaken that reflects on how this information system should be structured and that reviews which barriers and costs are overlooked by existing information tools.</p>
9.	<p>The Single Market is a key policy for the European Union, with the potential for significant further benefits to be achieved from further removal of costs and barriers. Current European institutional structures do not appear to fully reflect this and we propose that they be reinforced and realigned, recognising the important role that can be played by the European Parliament, and in particular the <b>IMCO Committee</b>.</p> <p>Elimination of barriers and costs should become a central focus of better regulation and should be taken into account comprehensively across the policy cycle, including in strategic programming (Commission strategies, Council Conclusions, EP resolutions, etc.), legislative and non-legislative actions, REFIT and ex ante and ex post impact assessment. This could be achieved by:</p> <ul style="list-style-type: none"> <li>d. integrating an improved barriers and costs test into the SME test, and using this <b>revised SME test</b> comprehensively and systematically across all European legislation. Similar tests at the level of the Member State could also be beneficial to SMEs; better regulation standards and access to data could be coordinated on the European and national levels.</li> <li>e. building a centralised <b>analytic function</b> that can query the data generated by the information system proposed in Recommendation 8 and integrates them into the smart regulation policy cycle in order to identify more effectively and efficiently remaining market and regulatory barriers and unnecessary costs;</li> <li>f. choosing appropriate legislative instruments, taking into account the</li> </ul>

No.	Recommendation
	<p>full range of implications of that choice, in line with the smart single market regulation framework. This should include consideration of likely implementation timeframes and effectiveness, taking account of the costs of slow Europe. This may, for example, lead to the more frequent use of such legal instruments as regulations rather than directives, since the latter may lead to slow and incomplete implementation.</p> <p>National legislatures, administrations and courts have an important role in guaranteeing that the elimination of market barriers and regulatory barriers raised by national regulations happens expediently and uses the most effective regulatory instruments. A Zero Compliance Costs for SMEs Action Plan could further increase the role of national authorities in this process.</p>
10.	<p>The current consultation framework, in combination with existing online feedback mechanisms and other information tools, should be developed into a <b>Persistent Regulatory Evolution and Enforcement Tool</b>, an ongoing information collection and consultation platform set up to collect and aggregate information and make it available for use in enforcement or the continuing legislative reform process.</p>

Source: London Economics

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ISBN 978-92-823-9036-8 (paper)  
ISBN 978-92-823-9037-5 (pdf)

doi: 10.2861/20888 (paper)  
doi: 10.2861/961227 (pdf)



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