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NOTE

From: Trio Presidency
To: Working Party on Competitiveness and Growth (High Level)
Subject: Background paper on Enforcement in the Single Market

Delegations will find in Annex a Trio Presidency background paper on Enforcement in the Single Market, in view of the meeting of the Working Party on Competitiveness and Growth (High Level) on 19 May 2022.

Background paper from the Trio Presidency – Enforcement in the Single Market

A well-functioning, vibrant Single Market is one of Europe's key achievements and must be cared for adequately. The effective implementation of Single Market rules is the essential pre-requisite for citizens and businesses to fully benefit from the potential and size of a market of 450 million persons.¹ The smooth functioning of the Single Market was severely tested recently, during the Covid-19 crisis and the war in Ukraine. At the same time the crisis has demonstrated that we need to work together to reinforce the Single Market's resilience. March European Council conclusions recalled a need to ensure smooth functioning of the Single Market also in times of crisis, by implementing and enforcing its rules². In addition, the future Single Market Emergency Instrument should/could enable to respond quickly to emergencies and crises that threaten the functioning of the Single Market.

The Commission is committed to ensuring that the Single Market functions for all and that its rules are consistently implemented, applied and enforced, as described in the long-term action plan for better implementation and enforcement of single market rules³.

It is more important than ever to work together to make best use of our common framework to strengthen the functioning of the Single Market. We need to identify jointly how to ensure that the common rules on which we have agreed are timely and correctly transposed and applied. Preventing the creation of new barriers is equally important. In this context notifications and ex-ante control mechanisms (proportionality assessments) as well as close cooperation with Member States' authorities are essential.

¹ It is estimated that the benefits of removing the remaining barriers to a fully functioning single market for goods and services could amount to €713 billion by the end of 2029 (European Commission, Factsheet "A single market that delivers for businesses and consumers" of March 2020).

² [Conclusions of the European Council meeting](#) (24-25 March 2022) EUCO1/22, para.21. See also [Versailles Declaration](#) of 10 and 11 March 2022, Informal meeting of the Heads of State or Government, para. 20.

³ COM/(2020/94 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Long term action plan for better implementation and enforcement of single market rules

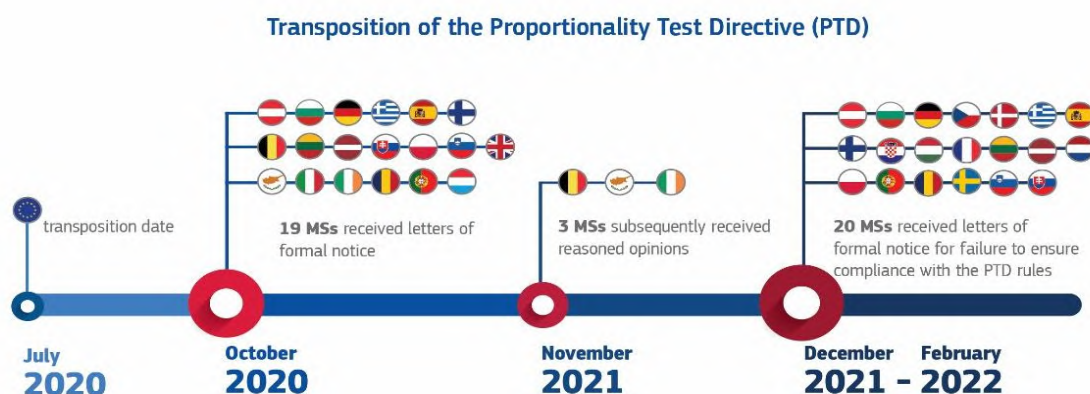
This paper is focused on enforcement on three key aspects, calling for joint efforts to avoid remedial action, make best use of preventive tools, and reinforce partnership between Member States and the Commission.

1. REMEDIAL ACTION – SCOPE FOR REDUCTION

Ensuring better compliance at early stages of implementation of legislation is of fundamental importance. The non- or deficient transposition of EU law still too often necessitates infringement action by the Commission. The statistics on non-communication and non-conformity cases demonstrate that there are challenges with implementation of basic provisions, in varied degrees across Member States. Over 80% of formal infringement cases that were newly launched by DG GROW in 2020-2021 concerned non-communication of national measures transposing directives and non-conformity of national provisions with the requirements of directives (see the Annex for more details). Much can be gained by increasing Member States efforts at initial stages to ensure compliance and decrease or eliminate cases of non-communication and non-conformity.

Examples:

Most recently the Commission has made significant efforts in supporting Member States in a robust transposition and application of the **proportionality test directive** (PTD).⁴ 19 Member States were late with transposition of the PTD and in two it is still not fully transposed⁵. At present, transposition deficits were identified in 20 Member States.



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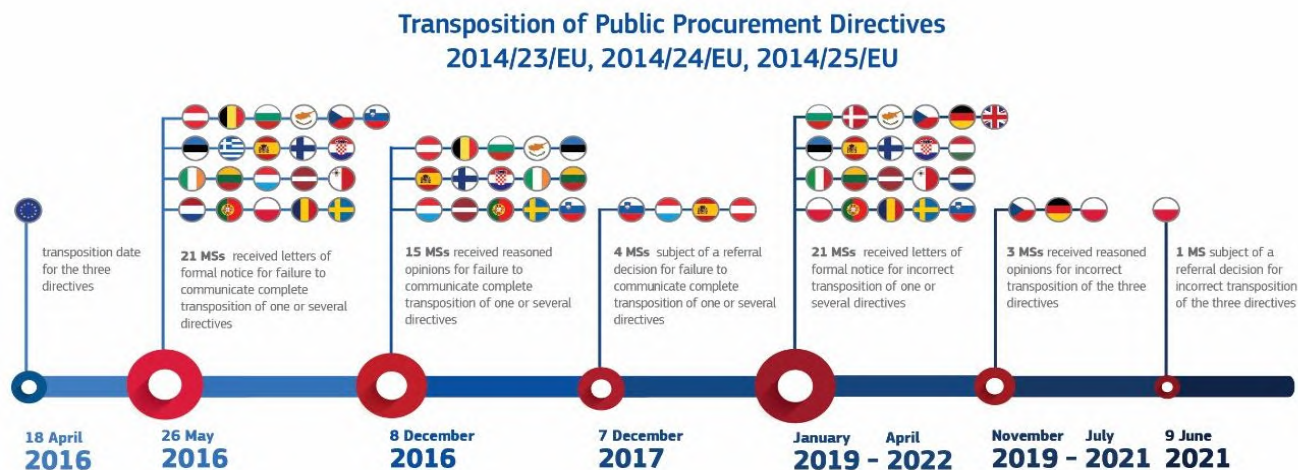
⁴ Directive 2018/958/EU. The main problems of incompliance include the failure to capture all types of measures within the scope, the failure to accurately transpose the criteria of the proportionality test and the failure to ensure the necessary procedural guarantees.

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Similarly, a series of non-communication procedures was launched in 2016 for the three **public procurement, concessions and utilities directives**⁸, followed by non-conformity procedures in 2019-2021. In total, 21 countries were concerned; ten of those cases remain open.



Another indicator of challenges with effective compliance with existing rules is the number of complaints received regarding malfunctioning of the Single Market. (i.e., DG GROW observed a significant increase of 57% in the number of incoming complaints from 2020 to 2021). This statistic clearly shows that the Single Market is far from a reality for our citizens and businesses (see the Annex for more details). Many of these complaints relate to individual cases of bad application and are thus beyond the reach of enforcement by the Commission. Nevertheless, they indicate application issues which need to be tackled at national level.

Making this situation better requires joint efforts. The Commission is committed to enhance support through formal guidance documents (Handbook for the Services Directive, guidance on the proportionality assessments to be published in 2022, guidance documents in the area of public procurement), informal advice through the tools put at Member States' disposal (i.e., advice in the dedicated Wiki on shortening of time limits in public procurement procedures related to projects financed by EU funds) and continued dialogue bilaterally and in relevant expert groups.

⁸ Respectively, Directives 2014/24/EU, 2014/23/EU and 2014/25/EU.

2. PREVENTIVE TOOLS – ADDRESSING THE CHALLENGES AND MAXIMISING POTENTIAL

The need for transparency and timely information on potentially new restrictions or barriers to the Single Market became particularly evident during the Covid-19 crisis. This led to an exponential increase in notifications, which continues to this day. During 2021, the Commission examined 969 notifications under Single Market Transparency Directive (SMTD) and 84 notifications under the Services Directive (see the Annex for more detail).

Notifications under Single Market Transparency Directive

For the dialogue and cooperation under the SMTD notification procedure to continue preventing barriers to the Internal Market, the system must be used in an optimal way. The Commission has observed certain trends of concern in relation to the respect of the use of the notification procedure. On the one hand, it is important to respect the procedures set out in the SMTD, for example by ensuring that the conditions for urgency requests are met or, by respecting the standstill period. On the other hand, in some areas the content of the draft national measures often raises concerns as regards the free movement of goods or information society services. This is the case e.g., with protectionist tendencies in the agri-food sector, or some restrictions to the Single Market based on environmental or public health reasons.

To avoid possible legal consequences from incorrect application of the SMTD, systematic dialogue between the Commission and the Member States is essential. The Commission therefore proposes to discuss these issues in the Technical Regulations Committee when they are of a general nature, and reinforce bilateral discussion with the Member States concerned.

In addition, the Commission will continue its efforts to improve the notification procedure under the SMTD, notably by further increasing the transparency of the system through the publication of the reactions by both the Commission and Member States, where appropriate, as well as by modernising the Technical Regulation Information System (TRIS) notification system.

Notifications in the area of services

We welcome the strong interest by Member States in further strengthening the Single Market for services by improving, inter alia, the notification procedures in the services area⁹, aiming at preventing new barriers and reducing administrative costs for businesses.

To this end, it would be important to streamline existing notification procedures in the area of services under different legal bases, for instance, by improving the notification forms or setting up a preliminary diagnosis of the notification obligation (both on the compliance with the notification obligation and on the quality of the proportionality test).

In addition, proportionality assessments of national rules concerning services have to be encouraged and might be inspired by the Proportionality Test Directive. One possible avenue could be to provide more guidance and structure for such assessments via the Services Directive's notification procedure and the IMI notification forms used. Such guidance will have to be determined closely with the Member States and the competent authorities in charge of the notification process.

The Commission is also stepping up its efforts to increase transparency on notified requirements under the Services Directive. As under the SMTD, increased transparency for notifications under the Services Directive, again in parallel to the level of the Proportionality Test Directive, would improve impact and accountability.

⁹ Cf. Non-paper from the Czech Republic, Croatia, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovak Republic and Sweden “Revitalise and strengthen the single market for services”, non-paper from Sweden “An Action Plan for the Services Sector” and Non-paper of Denmark, the Netherlands, and Sweden on single notifications window.

3. RENEWED PARTNERSHIP MECHANISMS

SMET became a key vehicle for collaboration with Member States. It addresses concrete barriers that hamper the functioning of the Single Market¹⁰, such as cross-border restrictions for professionals (prior checks of qualifications for temporary service provision and excessive document requirements); measures with potential protectionist effects in the agri-food sector; administrative difficulties in relation to posting of workers; burdensome permit requirements for wind and solar energy installations. In the future, SMET will work on new work-streams, including diverging national requirements for labelling on packaging and products in relation to waste sorting. SMET projects potentially require cross-ministries collaboration. This innovative format has achieved tangible results since its creation in 2020. For its further success, continued willingness from the Member States to look beyond the legal obligations and to remove obstacles that hamper businesses' and citizens' life is needed.

At the same time, the Commission continued dialogue with Member States via efficient dedicated “package” meetings focused on finding solutions and accelerating resolution of infringement cases as well as other enforcement related issues linked to notifications and SOLVIT structural issues. In the package meetings in 2020-2021, over 100 open infringement cases were discussed, followed-up by discussions and bilateral technical meetings.

¹⁰ The First report on the work of the Single Market Enforcement Taskforce provides details on the achievements and substantial progress that has been achieved in these areas.<https://ec.europa.eu/docsroom/documents/47154/attachments/1/translations/en/renditions/native>

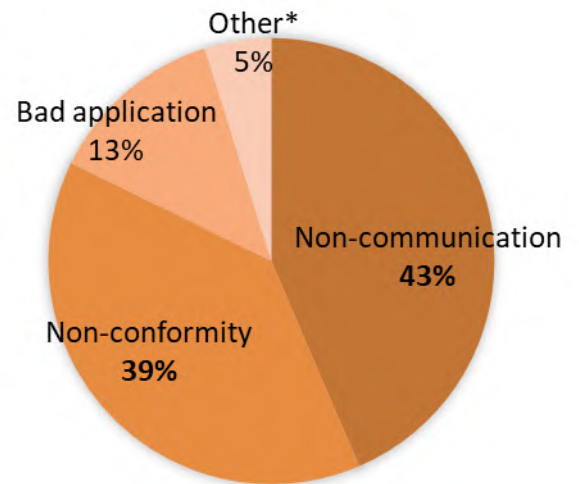
SOLVIT is celebrating its twenty years of existence. It is a true demonstration of partnership among Member States and the Commission to ensure that the Single Market works in practice. SOLVIT wants to ensure that more companies (and especially SMEs) find their way to SOLVIT when needed. It also aims to contribute to a better functioning Single Market by letting other alternative problem resolution initiatives build upon its expertise and infrastructure (e.g., the new problem-solving procedure laid down in the mutual recognition of goods regulation; the cooperation with the European Labour Authority). Finally, the Commission will better analyse data from SOLVIT cases to define systemic issues to bring to the attention of and possible solution by policy makers at EU and national level (such as the Commission departments, national administrations, Council, SMET etc.). As the weakest link determines the strength of the network, Member States are invited to reflect on how to ensure that respective SOLVIT centres are adequately staffed to fulfil this role.

Questions for discussion:

- 1. What creates issues of compliance with Single Market rules in your Member State? How can the Commission and Member States work together to ensure better compliance at early stages?*
- 2. How to ensure an optimal application of Single Market Transparency Directive rules? How could we maximise the potential of notification procedures and proportionality assessments in the services area?*
- 3. How to best leverage renewed partnership mechanisms? In view of cross-sectoral topics discussed in SMET what are your best practices in ensuring effective cooperation and coordination among different national authorities? What could the Commission do to improve your efforts at the national level?*

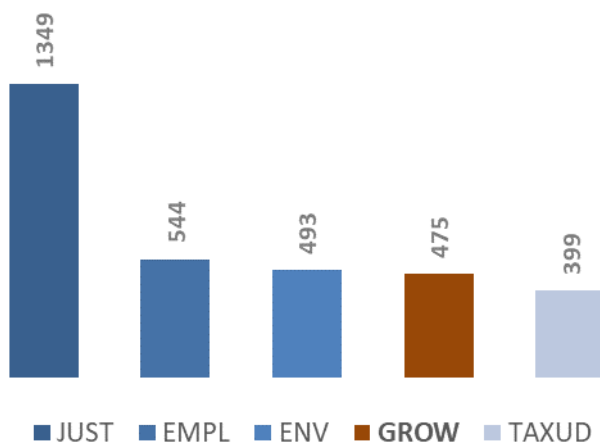
Enforcement statistics

Over **80%** of formal infringement cases (51 out of 62) that were newly launched by DG GROW in 2020-2021 concerned non-communication of national measures transposing directives (**43%**) and non-conformity of national provisions with the requirements of directives (**39%**).



*Regulations, Decisions, Treaties

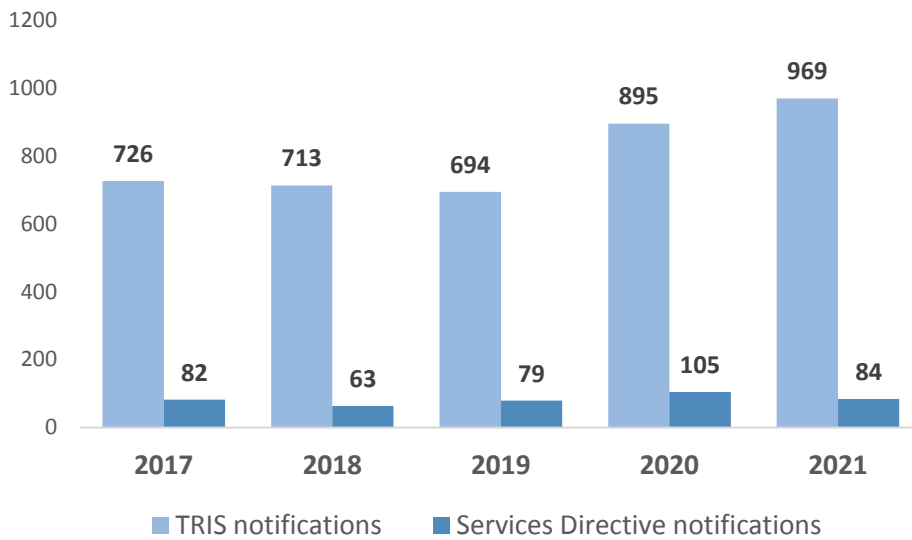
DG TOP 5 NEW COMPLAINTS (2021)



complaints in the reported period).

In 2021 DG GROW ranked **#4** amongst top five DGs with the highest number of new complaints from the citizens and businesses (**475** new

During 2021, the Commission examined **969** notifications under Single Market transparency Directive (SMTD) and **84** notifications under the Services Directive.



62

newly opened infringement cases
in 2020-2021

#4

amongst all DGs in terms of new complaints in 2021

80%

of new infringement