

**The way
forward for
the European
Single Market
– based on the
experience
of Danish
businesses**





An aerial photograph of a port area. In the foreground, a red truck is parked on a paved surface. Behind it, numerous shipping containers are stacked in neat rows, with some containers being taller than others. The containers are in various colors, including blue, red, green, and orange. The ground is marked with white lines and numbers, such as '16' and '15'. The overall scene is a busy industrial port environment.

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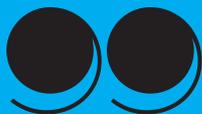
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The significance of the Single Market for our business cannot be overestimated. But we do see the risk of a collective amnesia where we forget that the Single Market is the result of an ongoing political effort and cooperation. We must continue the political work to maintain and develop the internal market for the future, and also tackle the barriers that remain.

Managing Director, Kasper Lundgaard Sørensen, Dan-Foam ApS

Executive summary

In 2017-18, the Confederation of Danish Industry (DI) conducted an in-depth investigation of how our member companies experience the EU's Single Market. Employing both quantitative and qualitative tools, the project explored what kind of barriers individual companies face when operating within the European market.

More than two-thirds of the companies who took part in the survey, answer that they benefit from the Single Market. However, more than half of these companies also express that they experience that the rules governing the Single Market are enforced differently across Member States. In practice, this heterogenous enforcement results in trade barriers in the shape of economic and/or bureaucratic burdens for companies involved in cross-border operations. The qualitative dimension of the study examined the nature of these barriers in further depth through detailed interviews with 51 CEOs and technical managers from both large and small companies spanning a number of different sectors.

Based on this study, DI has drafted five concrete recommendations with which to improve the Single Market by making it even more efficient and profitable for European companies.

In sum, DI recommends to:

- **Improve the complaint system for European businesses to make it more effective.**
- **Safeguard the European standardization system and the New Legislative Framework.**
- **Improve European market surveillance and increase its scope.**
- **Launch better regulation initiatives to reduce burdens and ensure better law-making.**
- **Establish national information portals to improve the conditions for companies exporting services and goods.**

Example of a barrier:

The Construction Product Regulation

The Construction Product Regulation (CPR) has regulated trade with construction products within the EU since 2013. According to the CPR, manufacturers can only market (most of) their products if they have been marked with a valid CE marking and a Declaration of Performance has been drawn up.

Despite the regulation in the CPR, several Member States continue to require national quality marks and documentation beyond the CE marking in national building regulations. An example is fire safety where Sweden, Belgium and France require SITAC, NBM and ACERMI certificates, respectively. The different certificates all cover the same characteristics as the CE marking. The demand for additional certificates constitutes a heavy bureaucratic burden for manufacturers wishing to export their products to the aforementioned markets.

After DI presented the issue to The Danish Business Forum for Better Regulation, it was proposed that the challenge should be countered by increased information to Member States, especially to Member States that have national requirements that violate the CPR. It is crucial that the campaign and communication stress that the Member States have an obligation to promote and facilitate an open and free internal market within the EU.

Introduction

The EU's Single Market is the world's largest single market comprising more than 500 million people and 26 million companies. Designed to allow for goods, services, capital and people to move freely across borders, the Single Market makes it easier for millions of businesses to reach customers and suppliers all across Europe. The level playing field constituted by the Single Market has increased competition and the supply of goods and services. It has led to price reductions, improved productivity and strengthened the economy of EU's Member States.

The Single Market is a cornerstone of the European integration achieved through persistent political investment and cooperation among the EU's Member States. However, businesses still face a variety of trade related barriers incompatible with the principles and intentions of the Single Market. These barriers limit the companies' potential for growth and prevent the Single Market from reaching its full potential.

The Juncker Commission has launched a number of proposals aimed at improving the Single Market for both goods and services. Some of these initiatives have resulted in successful new Single Market legislation. However, many constructive proposals have suffered from lack of support in the Council of Ministers and/or at the European Parliament. Furthermore, some proposals have in fact resulted in legislation that creates new burdens and additional legal uncertainty for companies.

There is thus an urgent need for the incoming new Commission and the new European Parliament that take office in 2019 to formulate a strong and ambitious strategy for the improvement of the Single Market.

Maintaining and developing the Single Market is an ongoing effort that needs constant political attention. In that respect DI's survey provides critical input. The survey revealed a number of specific barriers to cross-border trade on the Single Market as well as structural and horizontal challenges to its core functions. Tackling these barriers should be a top priority for the next EU legislative cycle.

Findings from DI's Single Market survey

Over a twelve-month period from medio 2017 to medio 2018, DI conducted a survey among its member companies with three objectives in mind:

- To assess companies' overall perception of the Single Market and to what extent they benefit from it.
- To identify and find solutions to the specific barriers that businesses still struggle with when operating within the Single Market.
- To pinpoint the main issues that need further political attention for the Single Market to function better.

The investigation led to the following results:

- Clear evidence that, in general, companies enjoy great benefits from the EU Single Market (compared to trade conditions in Europe before the Single Market was established and compared to how they trade with countries outside the Single Market).
- Identification of more than 50 different, specific barriers that our members face when operating within the Single Market.
- Five specific DI recommendations for policy makers in the EU and the Member States related to the core functions of the Single Market.

The results were reached by conducting 51 detailed interviews and collecting 596 questionnaire responses from our members, spanning all sectors and company sizes.

We asked our members; what works well on the Single Market, where does the Single Market fail to accommodate cross-border trade, and how can we remove the remaining challenges and obstacles?

The findings have been compared to and supplemented by findings from four similar surveys conducted by DI between 2004 and 2015.

Questionnaire

596 responses.
59 elaborations on concrete barriers to trade.
All sectors and sizes represented.

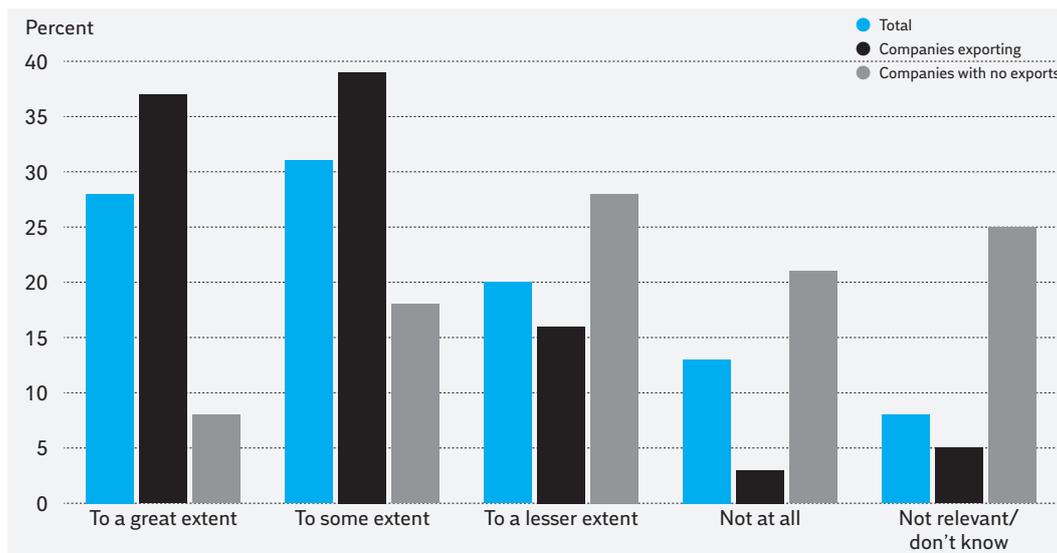
Interviews with member companies

51 detailed semi-structured interviews with company executives and relevant technical managers.
All sectors and sizes represented.

In general, companies are satisfied with the Single Market. They fully understand and appreciate the value of common standards, legislation and mutual recognition as a fundamental regulatory framework for their activities. This applies to all sectors and company sizes.

Danish companies benefit from the European Single Market

To what extent does your company benefit from the European Single Market? (percent)

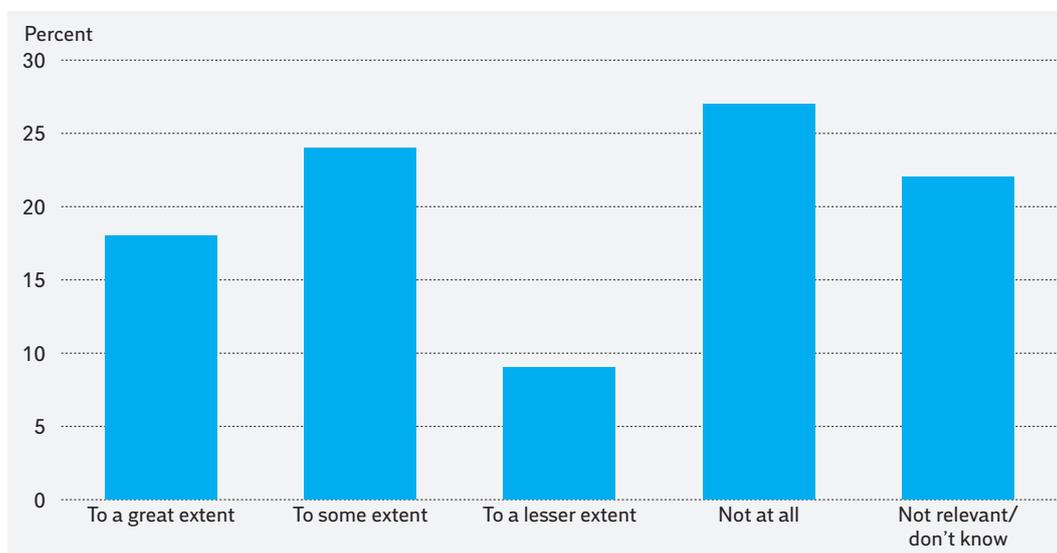


Source: DI business survey – 596 responses, September 2017

Despite the benefits of the European Single Market, companies still encounter barriers, and many of them experience that EU regulation is interpreted differently from Member State to Member State.

EU laws experienced differently from Member State to Member State

To what extent does your company experience that EU laws are applied, enforced or interpreted differently from Member State to Member State? (percent)



Source: DI business survey – 596 responses, September 2017

What barriers and challenges do businesses encounter?

The survey showed that every business sector is affected and that both small and large companies face barriers on the Single Market.

The companies face different kinds of barriers that are related either directly or indirectly to EU legislation - both when they operate in Denmark and in the other EU Member States.

The obstacles range from minor hassles that companies often find on-ground-solutions to, to bigger structural barriers, often caused by lack of harmonization. An example is printed food contact materials where lack of harmonized rules has caused different Member States to implement national legislation that impedes cross-border trade.

The chart on page 11 shows the areas where DI member companies most frequently encounter barriers.

Example of a barrier: National temperature requirements for semi-preserved foods

The temperature requirements for semi-preserved foods vary throughout Europe. This causes problems for companies that produce their products in one Member State and wish to export them to other Member States in the EU.

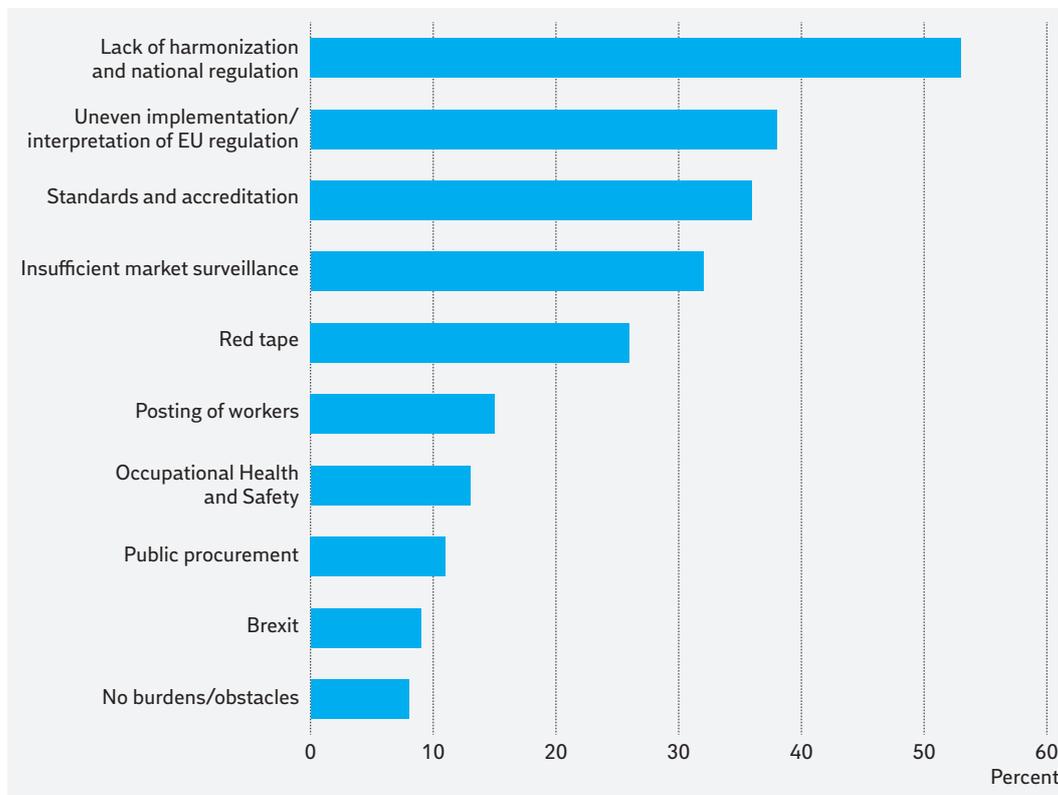
A company producing semi-preserved foods in Sweden faced difficulties when exporting its products to Denmark. As Danish legislation requires lower temperature, the company had to send its products to external cooling facilities to comply with the Danish temperature requirements. The cooling procedure was not only expensive for the company; it also affected the consumers as the lengthy cooling procedure meant that the products were closer to their expiration date when they finally reached the stores.

DI has presented the case to the Danish Business Forum for Better Regulation, which has now proposed that national temperature requirements for semi-preserved foods are abandoned and the export of such products instead fall under the principle of mutual recognition. This would imply that the producers should carry out a risk assessment that defines expiration date of the product based on the temperature that it is kept at. This would make it possible for companies to import and export products at different temperatures as long as the risk assessment clarifies that they are safe to consume.

The Danish Government is currently assessing the proposal from DI.

Companies face different challenges in the Single Market

Areas of the Single Market and EU regulation that create burdens and obstacles for companies



Source: In-depth interviews with 51 member companies (one company may experience several obstacles in various areas)

Explanatory notes to the figure:

The challenges encompassed by lack of harmonization and national technical regulations relate to the existence of national technical rules and lack of mutual recognition for products lawfully marketed in another EU Member State. It furthermore relates to requirements to comply with different regulations for innovative products across Member States.

The issue of uneven implementation and interpretation covers challenges that companies face when the same piece of EU legislation is implemented and/or applied in different ways in different Member States.

The issues related to standards and accreditation have to do with how businesses show that they comply with EU legislation. Today, businesses often lack access to the standards they need to show presumption of conformity with the rules. This is because European harmonized standards are not published in the official Journal of the European Union. When using 3rd party certification to show presumption of conformity with EU legislation, companies experience that the requirements they must live up to differ depending on who has accredited the 3rd party certification supplier.

Many companies are frustrated with insufficient market surveillance, because lack of uniform market surveillance allows non-compliant products on the market which creates an un-level playing field. Moreover, this generates uncertainty about how the legislation should be interpreted.

Where can companies turn to have Single Market barriers removed?

The current regulatory regime related to the Single Market is not oblivious to the fact that challenges persist on the ground. Depending on the nature of the specific barrier, businesses can draw political attention to the issues as well as propose possible solutions through a number of specific channels at both national and European level.

Example of a barrier: Custom tariff codes

A Danish company delivering customized electronic solutions to a wide range of different sectors faces difficulties when categorizing its imported technical components according to the European custom tariff codes.

The custom tariff codes and related systems have become outdated as they are incapable of adapting to a new digital reality where the components are changing constantly and can be used for many different purposes. For instance, the Danish company delivers products for both windmills and hearing aids, making use of similar components in both cases. This makes it extremely difficult for the company to categorize the components according to a common custom tariff code.

Identifying the right custom tariff code is not only time-consuming for the companies, they also risk a fine if the authorities deem that the components were incorrectly categorized.

By being active in the Danish Business Forum for Better Regulation, DI has co-drafted proposals for how to solve the problem of the current custom tariff codes. The proposals focus on modernizing the custom tariff codes by making them more up-to-date, both in terms of applying the correct language for describing products but also by keeping track of technological developments.

The Danish Government is currently assessing this proposal. The proposal will also be sent to the REFIT Platform.

Official national and EU problem-solving tools for Danish companies

SOLVIT



An informal problem-solving network created to solve cross-border challenges on the Single Market. The challenges need to involve the public authorities and must not have been brought to the courts. Businesses can forward their inquiries to their national SOLVIT center free of charge. The national SOLVIT center will engage with the SOLVIT center in the Member State where the problem is experienced. SOLVIT will then aim to find a solution to the problem within 10 weeks. DI is established as a SOLVIT partner and can assist member companies with the filing of cases.

REFIT Platform



A European platform that provides advice to the European Commission about how existing EU regulation can be made more effective and efficient. The platform includes representatives from the Commission, national authorities, interest organizations as well as other relevant stakeholders. All EU citizens, companies, organizations and Member States can highlight legislative areas that cause burdens, which the REFIT Platform should look into. Businesses can upload their proposals on a website called “Lighten the load”.

Danish Implementation Council



The primary objective of the Council is to provide advice to the Danish Government about implementation of EU regulation in Denmark. This is to ensure that Danish businesses do not have to comply with heavier regulation than their European peers. The Implementation Council consists of representatives from different business and consumer organizations (including DI) as well as trade unions and experts. The Council meets four times a year.

Danish Business Forum for Better Regulation



The Forum is tasked with identifying the most burdensome areas within national regulation for Danish businesses and propose simplification measures. It consists of representatives from businesses, business organizations (including DI), trade unions as well as better regulation experts. Any company and organization can suggest simplification measures through a website called “enklereregler.dk”.

While these fora and platforms may help to some extent, they are unfortunately not sufficient to close the gaps and remove all the barriers that still exist on the Single Market. Moreover, some issues require thorough political discussions and priorities that go beyond the mandates of these platforms. More action is thus needed to complete and improve the Single Market, as will be elaborated on the following pages.

The way forward – five recommendations for future action

Based on the findings from the interviews and the questionnaires, DI has developed five policy recommendations that would improve the Single Market significantly to the benefit of companies, consumers and economic growth in Europe.

Improve the complaint system for European businesses and make it more effective

Many companies do not claim internal market rights to which they are entitled. If a company encounters an illegitimate request to adjust its products, fulfill additional labelling requirements, conduct additional tests or to carry out service provisions in an especially onerous way, they either comply with these additional demands or abstain from market entry. Only very few companies pursue their due rights through expensive court cases that often end up taking years to be processed by the judicial system.

DI's study uncovered that companies often do not know of the possibility to present their case to the informal complaint system SOLVIT, which is explicitly designed to make it easier for companies to report and remove barriers they face when operating in the Single Market. However, in addition to the lack of awareness about SOLVIT, the system has a poor track record when it comes to resolving business cases related to trade barriers.

The Commission has launched an Action Plan on SOLVIT to improve the complaint system, but has no power to enforce the actions suggested at Member State level. Furthermore, the adoption of a new regulation on mutual recognition will ensure Commission involvement in the handling of complaints related to lack of mutual recognition from 2021.

DI suggests that:

- Member States should act according to the Action Plan on SOLVIT and share best practices.
- The Commission should follow up on the Action Plan on SOLVIT at Member State level to heighten awareness and determine if a stronger legislative framework is needed to ensure companies access to an effective complaint system.
- A stronger legislative framework should allow for involvement by the Commission in all types of complaints handling related to the challenges businesses face on the Single Market. This should be regardless of whether these complaints are related to national or EU legislation and regardless of whether they are related to the legislation itself or its interpretation.
- Companies are allowed to engage directly with the Commission in the problem handling process.

Safeguard the European standardization system and the New Legislative Framework

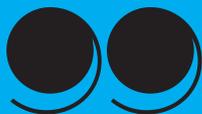
New Legislation Framework (NLF) is a method of developing harmonization legislation that has helped speed up the integration of the Single Market. In NLF, harmonization legislation establishes the essential requirements that products need to comply with within the EU. The technical specifications that ensure presumption of conformity with the essential requirements – also known as harmonized standards – are developed by the established standardization system. The European Commission is responsible for publishing references to these standards. Member States are obliged to enforce the rules through market surveillance at national level. National authorities are also obliged to object to the standards if they discover that products produced in line with the standard in question do not comply with the essential requirements of the relevant legislation.

However, many references to standards are not published and many companies are therefore forced to use 3rd party certification before they can market their products. This is very expensive and time-consuming as certification capacity is scarce. Furthermore, the solutions identified by the European Commission to solve the issue, impose substantial administrative burdens on those companies that contribute to the development of the European standards. This ultimately reduces the companies' interest in contributing to the development of the standards, which is problematic because the technical know-how in standardization predominantly comes from company experts.

Without European harmonized standards, the NLF cannot work properly. Many SME's will be forced to use 3rd party certification, which is expensive, or alternatively give up marketing their products. Bigger companies, on the other hand, will revert their activities to other fora to the disadvantage of European innovation and growth. Action is needed in order to ensure that the NLF, which has served the Single Market so well for more than 30 years, will continue to do so.

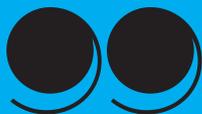
DI suggests that:

- The Commission acknowledges and evaluates the consequences of the changes imposed on the standardization system.
- The Commission should ensure that requirements related to the development of standards are proportional to the purpose that standards serve, i.e. as a voluntary compliance tool to obtain presumption of conformity with the essential requirements of EU-legislation.
- If needed, the Commission should propose a revision of the standardization regulation (1025/2012), to accommodate a proper balance between the requirements that harmonized standards need to live up to and the role they serve as a voluntary compliance tool.



The lack of publication of references to European harmonized standards is a problem affecting the core function of the Single Market. It is of high importance that action is taken to preserve both the European standardization system and the new legislative framework.

Senior Standardization Specialist, Jørn Tychsen, GRUNDFOS Holding A/S



Insufficient market surveillance is a big problem for our customers. They do everything possible to only sell compliant products but face unfair competition from non-compliant products. Non-compliant products are not just a problem on the BTC market, but also on the BTB market, where companies, which unintentionally buy non-compliant products for their production, can end up with considerable costs and administrative burdens in order to ensure compliance. Therefore, it is important with more effective and efficient market surveillance to ensure fair competition and user safety.

Managing Director, Hans Morten Henriksen, Maskinsikkerhed ApS

Improve European market surveillance and increase its scope

Many companies express concern about unfair competition due to lack of sufficient market surveillance. Compliant companies spend a vast amount of time and resources to ensure their products comply with the increasingly complex legislation. Yet far too often, non-compliant products can be placed on the market with no consequences to rough traders. That distorts the market.

More and better market surveillance could ensure more fair competition and incentivize compliance with the established regulations. In addition, increased market surveillance would provide for a better understanding of how to interpret the relevant legislation and result in greater certainty for companies regarding the formal requirements their products must comply with in order to be lawfully marketed on the Single Market.

While cross-border e-commerce within the EU is increasing, so is global e-commerce. End users – B2C as well as B2B – can purchase products online from companies all over the world. Without stringent market surveillance at the EU's external border, this poses a threat to European product safety standards, as products sold by third country based companies do not necessarily comply with the EU-rules.

A new regulation that addresses some of the challenges mentioned here will come into force in 2021. However, more work is needed.

DI suggests that:

- The Commission and Member States should ensure proper implementation of the new legislation on market surveillance of harmonised products and work to improve the legislative framework for market surveillance of non-harmonised products.
- The Commission performs a better and more systematic follow-up on Member States' obligations to enforce common EU rules within their national territory.
- The Commission should ensure that the new legislation on market surveillance does not interfere negatively with global trade and work to identify global solutions to the challenges related to e-commerce for instance at WTO level.
- Member States should allocate sufficient resources to ensure a well-functioning market surveillance and share best practices at EU-level on how to achieve this.

Launch better regulation initiatives to reduce burdens and ensure better law-making

Regulation affects all areas of a company's operations and determines the ease of doing business. While good regulation is a driver of economic growth and ensures a fully functioning Single Market, burdensome and complicated regulation endangers both.

A key determinant of business success is the capacity to innovate, adapt and make use of new technologies and business models. The overwhelming pace of technological change, however, confronts the EU with uncertainty and complexity in terms of what and how to regulate. To ensure a regulatory process that is innovation-friendly, the innovation principle should be a guiding principle and integrated throughout the regulatory life cycle. Furthermore, digital tools and processes should prevail in the administration of the regulation in order to ensure user-friendly and efficient public services to businesses and citizens.

Companies further experience an inconsistent transposition and implementation of EU-legislation, which creates barriers and has a burdensome impact on companies' cross-border operations. EU legislation must be transposed in a way that does not fragment the Single Market, nor hinders competitiveness or creates unnecessary compliance costs and burdens. There is a need for common criteria to underpin proper transposition and implementation of EU legislation.

DI suggests that:

- Member States and the European Commission should continue to make sure that legislation adopted jointly at EU level can be transposed and implemented at national level in a way that supports the functioning of the Single Market.
- The European Commission must ensure innovation-friendly and digital-by-default regulation, which is a precondition for a well-functioning Single Market.
- The European Commission should take the lead in developing guidance related to good transposition and implementation of EU legislation.
- EU legislation always is transparent and based on evidence to ensure stability and coherence of EU actions.
- The Commission engages with stakeholders and uses systematic impact evaluations before and after the adoption of rules. This will ensure that the Commission receives crucial input to the rule-making process and it must therefore continue to be an active part of the better regulation agenda in the EU.
- The mandate of the REFIT Platform should be renewed under a new Commission and improvements should be introduced to make the work of the REFIT Platform even more relevant and efficient.

Example of a barrier: Posting of workers

A manufacturing company and service provider has contacted DI because the company experiences increased complexity in the procedures, and registration and documentation requirements concerning posting of workers in some Member States. The company operates in several Member States providing maintenance services on production equipment they have manufactured and sold to European customers. A swift and smooth process for posting of workers is essential for the company's fulfillment of the service contracts it has with its customers across Europe.

However, the company struggles to uncover which documentation and registration requirements to adhere to when posting workers in some Member States, and which authorities to refer to. In some Member States, the company has to consult several websites – at times only available in the local language - to obtain an overview of the relevant requirements. Still, due to the fragmented information the company does not feel certain that it has everything in order. Nonetheless, it has to fulfill its contractual obligation to provide the services their customers require. Considering that some Member States issue excessive fines for non-compliance, the lack of transparency puts this company in a very uncomfortable situation when fulfilling their service contracts.

DI has raised this issue in both the Danish Business Forum for Better Regulation and the Danish Implementation Council, and recommended to establish national information portals to improve the conditions for companies exporting services and goods (in line with the recommendation described on page 22).

The Danish Government supports this recommendation.

Establish national information portals to improve the conditions for companies exporting services and goods

Many manufacturing companies sell their goods with a service included as part of the complete product. This could for instance be installation and/or maintenance of machinery. Thus, a crucial element of the business model for such companies is that they can post workers across the Single Market in order to provide such services. As such, posting of workers, cross-border service provision and cross-border trade in goods are interlinked.

However, companies that wish to export goods and services often face difficulties trying to obtain information about what rules to comply with (national rules as well as EU rules), which procedures to follow and which public authorities to contact in the Member State they wish to export to.

Some non-exhaustive examples of rules and requirements that companies must comply with when accessing another market are:

- ④ Requirements regarding technical approval
- ④ Requirements regarding registration of the company
- ④ Documentation of the company's eligibility
- ④ Registration of posted workers
- ④ Various documentation concerning the posted workers/staff (qualifications, skills, health etc.)
- ④ Various VAT and tax issues, including registration of staff at local authorities
- ④ Requirements regarding local safety certificates and other work environment issues

Considering the many different requirements, it is essential that businesses wishing to export to another Member State, can easily access all relevant information about the rules that they must comply with in order to gain market access to a given Member State. To that end, the Single Digital Gateway is an important tool, however a more coordinated approach on Member State level is needed.



DI suggests that:

- All EU Member States should establish a coordinating national information portal where foreign companies can easily access and – in a single response – obtain all the information they need about which authorities to refer to, and what regulations and procedures to comply with in order to obtain market access to the Member State in question.
- All information and relevant documents on this national information portal should be available in English.
- The national information portal should be responsible for helping local companies that wish to export services and/or goods to other Member States. Particularly by helping them – in their native language – to identify which requirements, procedures etc. they must comply with in other Member States.
- The national information portals should share their experiences regularly among Member States and with the Commission in order to improve the services they offer to companies, to implement best practices and to uncover flaws in the Single Market.



The Confederation of Danish Industry (DI) is a private organisation, funded, owned and managed entirely by approximately 11,000 companies within the manufacturing, trade and service industries. DI is the strong voice of corporate Denmark – we aim at providing the best possible conditions for growth and competitiveness.

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