DIGITAL ASPECTS OF THE EU SINGLE MARKET

Still an incomplete work in progress?

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SUMMARY

The Single Market is essential both for internal cohesion and for the EU's global competitiveness versus the United States and China. It seeks to ensure and enable the free flow of services, goods, capital and people within the EU/EEA; however, none of these four traditional dimensions of the Single Market have been fully achieved – neither in the physical world, nor in the online world.

As we look towards a new EU mandate, it becomes important to review the Single Market's successes and failures in the digital world. This CEPS In-Depth Analysis paper seeks to review progress (and lack of progress) to date, and to provide some practical recommendations that policymakers can take forward into the new mandate.

Tags: AI, digitalisation and innovation; Internal Market; industry; entrepreneurship; SMEs

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Executive Summary

The Single Market is essential both for internal cohesion and for the EU's global competitiveness versus the United States and China. It seeks to ensure and enable the free flow of services, goods, capital and people within the EU/EEA; however, none of these four traditional dimensions of the Single Market have been fully achieved – neither in the physical world, nor in the online world.

Fully achieving the Single Market's ambitious goals will always be challenging as long as the EU continues to resemble a confederation more than a federal republic. The EU Treaties explicitly provide for the principle of *subsidiarity* – for recognition that many functions most appropriately reside at Member State level. This implies that progress towards a Single Market is possible only to the extent that a substantial degree of consensus can be reached – this is difficult to achieve and may possibly become even more challenging as the EU has recently committed to further eastward expansion in the wake of the war in Ukraine[1].

Despite these challenges, there has been considerable effort to enact new laws to better knit together the Single Market as far as digital services are concerned. Yet surprisingly little progress is visible in the headline numbers.

Suffice to say, more effort is definitely required, but it is warranted. Many studies make clear that the EU potentially benefits from economies of scale and scope if it can fully realise its Single Market.

This CEPS In-Depth Anaylsis report deals specifically with the digital aspects of the Single Market. It serves as a companion piece to the comprehensive CEPS In-Depth Analysis report written by Jacques Pelkmans and published earlier this year that deals with the Single Market as a whole.

Cross-border e-commerce and the Digital Single Market (DSM)

The Digital Single Market (DSM) enacted during the 2014-2019 mandate sought primarily to facilitate cross-border e-commerce by dealing with long-standing impediments that were fairly well understood. These measures are directly relevant to achieving the Single Market in the digital world.

Nonetheless, and despite good intentions and serious effort invested, survey work in 2021 (see Figure 3 in Chapter 3) showed no visible improvement in the indicators that

[1] We do not claim, however, that having a federal system would automatically solve the problem of fragmentation. The US experiences considerable fragmentation among its states; China experiences considerable fragmentation among its provinces.

the DSM had hoped to correct. The reasons why are not always clear. Some DSM measures were clearly destined to be ineffective, but others that should have been effective have not yet borne positive impact. Consider for example VAT simplification, geo-blocking, consumer protection, parcel delivery, and measures to improve access to cross-border information – all of these are either incomplete or still sub-optimal when compared to the DSM's overall principles and aims. A lack of information about rules in other Member States has been a constant headache for e-merchants and implemented solutions such as SOLVIT and the Single Digital Gateway (SDG), whilst promising, have only had a limited level of success thus far.

That the EU does not appear to have noticed that businesses still perceive that not so much has actually changed regarding their struggles to engage in cross-border e-commerce points to defects in the overall Better Regulation process, which is itself in need of overhaul.

New sector-specific initiatives in health, finance, and elsewhere

Several new initiatives, some of them linked to the EU Data Strategy and specifically the data spaces, offer the potential to revive cross-border initiatives in several specific sectors. Conspicuous among these are measures proposed in sectors such as health and finance.

The EU has always had a role in public health but has been constrained by the fact that healthcare delivery is primarily a Member State competence. Consequently, achieving cross-border e-Health in the EU has had a long and chequered history. Efforts to facilitate cross-border e-Health, and to foster the interoperability of electronic health records to enable cross-border e-Health, have been ongoing for more than a decade, but have historically been ineffective.

A new legislative initiative on Electronic Health Data Spaces (EHDS), however, holds substantial promise. EHDS seeks to ensure that health data is available in digital form; that every patient has a right to have his or her personal data transferred to specialists of his or her choice; and that anonymised or pseudonymised data is available for industry research and for public health experts. The European Parliament and Council reached a political agreement on the EHDS on 15 March 2024. The challenge now will be to ensure prompt and correct implementation, which is heavily dependent on the actions of the Member States.

A similar initiative seeks to open financial data held by powerful incumbents so that the data can be used by innovative competitors. This move from *Open Banking* (with the PSD 2 Regulation, which already opened up data for payment services) to *Open Finance* (with the proposed Financial Data Access Regulation (FIDA)) is promising not only as a means of stimulating innovation, market entry, and competition, but also because it potentially enables innovative firms that are not tied to a single Member State to enter the market. It is unlikely that FIDA will be enacted in the short time remaining in the current mandate, but there are good prospects going forward.

CONSISTENT REGULATION OF ONLINE PLATFORMS

Numerous laws have been enacted over the last decade, or are about to be enacted, to deal with online platforms and other digital services. These include the General Data Protection Regulation (GDPR), the European Electronic Communications Code (EECC), the Digital Markets Act (DMA), the Digital Services Act (DSA), the Data Act, the Data Governance Act, and the Artificial Intelligence (AI) Act.

For each of these, it is necessary to ensure consistent coordination between the EU institutions and the Member States, and consistent implementation among the Member States. Each has its own way of doing so, and some are likely to work better than others – as a noteworthy example, the GDPR *One Stop Shop* was clearly flawed to the extent that two small Member States that have little incentive to act were made responsible for most of the hard cases. New harmonisation problems might well emerge among this plethora of new laws. Thus, continued surveillance is called for.

KEY RECOMMENDATIONS

This CEPS In-Depth Analysis paper provides a general background on the challenges that the EU faces in implementing a Single Market in the digital world, and identifies a wide range of potential mitigation measures:

- The need for consistent implementation of VAT rules among the Member States is likely to require continuous attention from policymakers for many years to come. To this end, the VAT in the Digital Age (ViDA) initiative appears to be promising, but getting it enacted is likely to be challenging.

- It will not be possible to ensure a free flow of goods ordered in the virtual world until numerous problems in the physical world have been resolved. Despite many years of attempts, with mixed results, it is still necessary to resolve well known challenges with mutual recognition, divergent safety regulations, and divergent labelling requirements.

- The public appetite for cross-border consumption of audiovisual content subject to copyright is high, and the current Geo-blocking Regulation (GBR) does nothing to address it. Fears promoted by the industry that extending the GBR would lead to enormous reduction in revenues, and consequently in the volume of audiovisual content produced, appear to greatly overstate the likely impact; however, the possibility of some negative impact cannot be excluded, and it is uncertain as to how much is likely. For these reasons, we suggest opening up cross-border delivery for a small volume of content as a controlled experiment to quantitatively determine the sensitivity of content production to a loosening of the geographic restrictions on the distribution of content. Exactly how to do this would require careful thought and design.

- The planned REFIT review of EU consumer protection rules is urgently needed. Even though these rules are nominally horizontal and harmonised, it seems clear that minimum harmonisation is not sufficient. It is likely that further legislation will be needed to reduce fragmentation when Member States implement consumer protection law.

- Unregulated cross-border parcel delivery prices continue to be unreasonably high relative to domestic parcel delivery prices, and the problem is getting worse over time, not better. New legislation is needed to address unreasonable over-pricing. At the same time, the entire business model of the NPOs is under enormous stress at present – it will be impossible to correct over-pricing of cross-border parcel delivery (the only area of growing profitability for many NPOs) without fixing the NPOs' overall business model to restore profitability. A fundamental re-thinking of the sector’s business model is called for. This will likely include measures to either reduce the costs that NPOs bear to implement universal services, or else to increase public subsidies.

- In its present form, SOLVIT is not effective in addressing the needs of merchants for cross-border physical and vertical commerce among the Member States. An evaluation is urgently needed, followed by concrete action at EU and Member State level.

- The Single Digital Gateway seems to have very substantial promise, and good progress has been made with implementation, with further enhancements planned. Unfortunately, it is not possible to judge today whether it is fully effective in addressing the underlying problems. Real surveys and tools need to be put in place.

- Detailed study is warranted to determine whether the many EU legislative measures put in place over the past decade to reduce cross-border frictions with digital transactions have truly been effective. If they have not been effective, it needs to be determined why not.

- The Better Regulation process, and in particular the ex-post evaluation portion of Better Regulation, appears to be urgently in need of ex-post evaluation itself (i.e. REFIT). The process needs to be independent of the Commission, which is subject to a conflict of interest in evaluating laws that it itself proposed. Better planning is needed when the initial legislative proposal is made to ensure that the data that will eventually be needed for evaluation is captured no later than the time at which the new legislation comes into force.

- The EU should use its good offices to promote prompt, full and effective implementation of the new EHDS by Member States, while fully recognising the principle of subsidiarity.

- The Financial Data Access Regulation (FIDA) is promising and deserves prompt enactment. It potentially helps to mitigate the dominance of powerful financial service incumbents that operate at Member State level. Before enactment, we urge the co-legislators to ensure that EU supervisory authorities will be adequately staffed to implement the new rules. We also urge the co-legislators to clarify which standards apply to data transfers, and which rules about maximum compensation, in cases where more than one answer is possible.

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1. Introduction

Key Findings

- The Single Market is essential both for internal cohesion and for the EU's global competitiveness versus the United States and China.
- The Single Market seeks to enable the free flow of services, goods, capital and people within the EU/EEA.
- None of these four traditional dimensions of the Single Market have been fully achieved – neither in the physical world, nor in the online world.
- The EU is closer to being a confederation than a federal republic. Progress towards a Single Market is possible only to the extent that a substantial degree of consensus can be reached.
- Despite the huge number of new laws that have been enacted over the past decade in an effort to better knit together the Single Market as far as digital services are concerned, surprisingly little progress is visible in the headline numbers.

In a prescient speech, the late, great Jacques Delors explained that the EU had pushed forward with an EU Single Market during his mandate as Commission President because it had been possible to achieve consensus on economic integration, but not on substantial political integration or institutional reform. The Single Market was erected based on three distinct pillars: 'competition that stimulates, cooperation that strengthens, and solidarity that unites'. He closed with a call to arms that is just as relevant today as it was in 2012: '*We must prevent Europe from missing out on the double challenge of internal cohesion, which is crucial and which is threatened by the current climate, and of global competition. Europe is facing a simple choice today just as it did back in the 1970s: survival, or decline*.'

The Single Market seeks to respond not only to the domestic (i.e. within the EU) need for scale economies, but also to the geopolitical and economic need to ensure EU competitiveness *vis à vis* the EU's greatest global digital competitors, the US and China, both of which enjoy far bigger domestic markets than any single EU Member State.

The Single Market is indeed essential – it is fundamental to the EU's architecture. At the same time, it must be viewed as an incomplete work in progress. The Single Market seeks a free and unimpeded flow of people, goods, services and finance, but the flow of services for instance is much less advanced than the flow of goods (Dahlberg, et al., 2020).

Indeed, fully achieving the Single Market will always be challenging as long as the EU continues to resemble a confederation more than a federal republic. The EU Treaties explicitly provide for the principle of *subsidiarity* – namely that many functions most appropriately reside at Member State level[2]. This implies that progress towards a Single Market is possible only to the extent that a substantial degree of consensus can be reached – a consensus that is difficult to achieve, and that may possibly become even more challenging as the EU has recently committed to further eastward expansion in the wake of the war in Ukraine[3].

The Digital Single Market (DSM) strategy was a major initiative during the previous mandate, but Single Market issues have not been centre stage during the current mandate. With Commission President von der Leyen's asking former Italian prime minister Enrico Letta to draft a study on how to reinvigorate the Single Market, and her asking former Italian prime minister Mario Draghi to draft a study on how to reinvigorate EU global competitiveness, these issues are now finally taking centre stage again – and that is where they belong.

1.1 A PLETHORA OF PROBLEMS CALLS FOR A PLETHORA OF SOLUTIONS

The Single Market seeks to enable the free flow of services, goods, capital and people within the EU/EEA. For digital services, that is roughly the order of relative importance of these four dimensions. What has now become clear is that none of these four traditional Single Market dimensions have been fully achieved – neither in the physical world, nor in the online world.

These problems, many of which cannot be solved in the digital world unless they are solved in the physical world first, tend to be very challenging, not only in terms of subject matter, but also in terms of achieving sufficient political buy-in.

The EU is not a federal republic – rather, it is more nearly a confederation, where the central authority (the EU) has certain powers that have been ceded to it, but all other powers remain nominally with the sovereign Member States. Strengthening the Single Market under these circumstances requires consensus, which is often difficult to achieve.

A huge number of new laws have been enacted both during the previous mandate and the current, nearly completed mandate, to strengthen the EU's digital capabilities and to respond to rapidly evolving technological possibilities.

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[2] Under Article 5 of the Treaty on the Functioning of the European Union (TFEU), '*in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level*.' See also Protocol 2 of the TFEU.

[3] We do not claim, however, that having a federal system would automatically solve the problem of fragmentation. The US experiences considerable fragmentation among its states; China experiences considerable fragmentation among its provinces.

The Digital Single Market enacted during the 2014-2019 mandate sought primarily to facilitate cross-border e-commerce by dealing with long-standing impediments that were fairly well understood. These measures are directly relevant to achieving the Single Market in the digital world.

The measures in the current term have sought to meet even more complex needs – facilitating the use of (non-personal) data, addressing threats to competition and to human rights posed by large online platforms, the sharing of personal and non-personal data, as well as sector-specific measures that seek to strengthen the use of data in specific sectors such as health and financial services. These measures also contribute to the Single Market, but not necessarily in such a directly visible way.

With all that said, it is important to add in closing that despite a huge number of new laws that have been enacted over the past decade in an effort to better knit together the Single Market as far as digital services are concerned, surprisingly little progress is visible in the headline numbers.

As explained at the beginning of Chapter 4, e-merchants appear to be just as dissatisfied with current arrangements as they were in, say, 2017. Cross-border electronic trade is not more prevalent, in terms of the number of firms that engage in it, than it was in 2017. Is it simply too soon to see the effects of the huge amount of new legislation that has been put in place? Or are bigger problems in play here?

1.2 FLOW OF THIS PAPER

This CEPS In-Depth Analysis paper serves as a companion piece to the comprehensive CEPS In-Depth Analysis report written by Jacques Pelkmans and published earlier this year that deals with the Single Market as a whole.

The *introductory chapter* provides initial reflections and emphasises the challenges that the EU faces in strengthening the Single Market. *Chapter 2* provides a quick summary of relevant literature. *Chapter 3* presents some key indicators that show consumers and e-merchants' dissatisfaction with the EU's current fragmentation. In *Chapter 4*, we go on to show that the situation has not much improved from the perspective of either consumers or of e-merchants. We then go on to review some of the major elements of the Digital Single Market, and to reflect on reasons why they are not demonstrating more visible improvement. *Chapters 5* and *6* provide a deep dive into two sectors, health and finance, where current EU policy seeks to strengthen digital cross-border functionality, and *Chapter 7* looks at new laws to deal with online platforms and how this raises new risks for harmonisation. Finally, *Chapter 8* recaps this report's key recommendations.

2. Key literature

Key Findings

- Interest in completing the EU Single Market is long-standing.
- Estimates of the economic benefits of doing so are substantial.
- Implementing the Single Market has been uneven to date. The free flow of goods and capital is considerably more mature than the free flow of services, but work is needed in all these areas.
- Even after substantial energy was invested in reducing impediments to cross-border trade in goods and services within the EU, many gaps are still obvious.

Multiple studies have found that the potential economic gains from the EU Single Market are substantial, but more recent studies suggest that many gaps remain in achieving them. Some of these gaps are general, while others relate specifically to the digital realm.

A key inspiration for the EU Single Market was the *Cecchini Report* (Cecchini, Catinat, & Jacquemin, 1988), which foresaw the Single Market driving potential growth of 4.25-6.5 % in GDP in the long run, with the upper end of the range dependent on additional supporting measures; later analysis suggests, however, that less has been achieved to date, which may imply that there is still room to grow.

A more recent comprehensive study for the National Board of Trade of Sweden (Dahlberg, 2015) likewise found that the '*single market has been a significant enabler for economic growth in Europe. … [C]omparisons are not easily done, but 2-4 per cent seems to be in the ballpark. … This effect primarily seems to have run through the free movement of goods and capital – the intra-EU trade and investment flows have experienced significant increases since the implementation of the single market*.'

The same report goes on to note that that the Single Market '*… does not seem to have affected the flows of services and people to a significant extent. … Single Market gains due to free movement of services appear to have been limited and uneven, and there are some indications that price mark-ups in the services sector have actually increased. Given that services represent some 70 % of European GDP and employment, this is worrisome*.'

A 2016 study by the Commission's JRC (Duch-Brown & Martens, 2016) using state-of-the-art analytic techniques found that if e-commerce sales of goods within the EU were as easy and cost-effective as domestic sales, retail prices would decrease in all countries, both online (1 % on average) and offline (0.5 % on average). Consumer surplus in the EU would increase by 1.2 %, primarily based on the reduction of the price paid for goods and to a lesser degree on the ability of consumers to choose from a wider range of goods. The study also found an increase of producer surplus (PS) of 1.4 %, not only by reason of increased consumption resulting from price elasticity of demand, but also because of the reduced costs of supply – many purchases that are made from 'bricks and mortar' retailers today would instead be made online.

In 2019, the European Council invited the Commission to identify obstacles that keep the Single Market from integrating further and from providing a level playing field to businesses attempting to benefit from it. In response, the Commission produced a comprehensive study of business perceptions based on survey work and desk research.

A subsequent study for the European Parliament (Dahlberg, et al., 2020) drew on the above-mentioned Commission analysis to provide a picture of legal impediments within the EU single market. It found that gaps and impediments continue to be substantial. This In-Depth Analysis paper's chapters on digital services and consumer protection provide important input on highlighting this.

On a more positive note, another study for the European Parliament (Marcus, et al., 2021), but also the aforementioned Dahlberg study, found that the Single Market held up quite well during the Covid-19 pandemic; in fact, the pandemic accelerated the take-up of digital services in general, specifically – and not surprisingly – including those services that are useful when working from home.

3. Challenges related to cross-border e-commerce

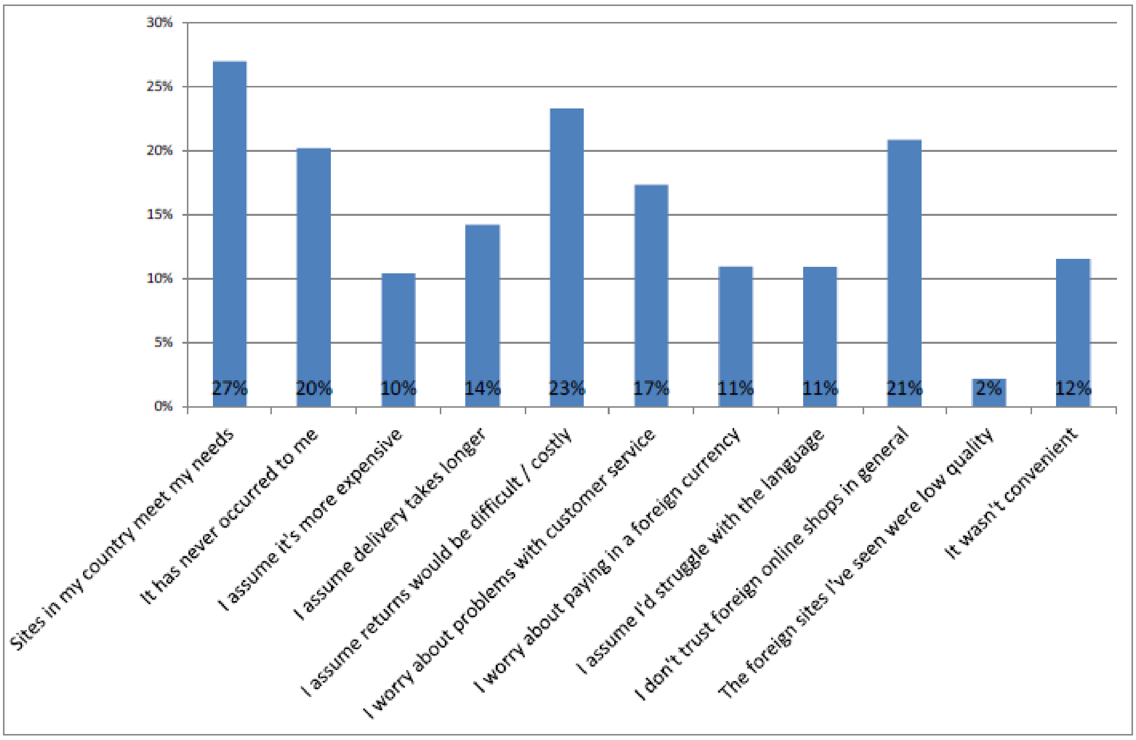
Key Findings

- The legislative measures put forward during the 2014-2019 term as part of the Digital Single Market strategy can be understood as a response to the problems with cross-border commerce as perceived by merchants and consumers.
- Survey work at the end of the legislative term showed that these problems are still with us.
- As of 2021, there was likewise no evidence that cross-border trade in goods or services within the EU had substantially improved.

The Single Market seeks to achieve the free movement of goods, services, capital and people among the EU Member States. Since two of these relate to cross-border physical and electronic commerce, much of the attention over the past decade has gone to promoting cross-border commerce, especially cross-border e-commerce. The pace with which new legislative measures were introduced to facilitate cross-border e-commerce increased dramatically under the Juncker Commission presidency, beginning in 2014.

The legislative measures put forward during the 2014-2019 term can be understood as a response to the problems with cross-border commerce as perceived by merchants and consumers. Some of the problems were specific to e-commerce, while others were equally relevant to traditional commerce. From the consumer perspective, numerous reasons to avoid cross-border purchases were identified, not all of which should be viewed as representing problems.

Figure 1. Reasons for consumers not to purchase a product online from abroad, averages across the Member States (2014/2015)



Source: (Dahlberg, et al., 2020, p. 118)[4]

From the perspective of e-merchants, numerous issues have been evident, but again not all should be viewed as problems, and some are equally applicable to cross-border physical sales. A survey of business users conducted by Eurochambres in 2019 confirmed the main findings of the earlier surveys and indicated moreover that the problems had not gone away (see Figure 2[5]).

These results are not identical to those shown in Figure 1, but that is not surprising. Those in Figure 1 were for consumers, while the Eurochambres survey was for e-merchants. It is to be expected that delivery prices would be more visible to e-merchants than to consumers, for instance, since merchants often bundle their delivery costs into the price that they charge for the goods. Similar considerations apply to VAT. In both cases,

[4] Authors' analysis based on the Google Consumer Barometer, a survey conducted on behalf of Google, viewed on 21 February 2017. The question asked was: 'Why have you never purchased a product online from abroad?' The data are based on a random survey conducted by phone and can be assumed to be reasonably representative and free of systematic bias.

[5] The Eurochambres survey was carried out between 2 September and 2 October 2019. 1 107 entrepreneurs from 27 EU countries responded to the poll. UK respondents were excluded. The survey is useful and indicative but cannot be presumed to be fully representative because the respondents are largely self-selected.

consumers experience the effects but have little need and little opportunity to influence the underlying costs.

Figure 2. Share (%) of all EU merchant respondents who viewed a barrier to the Single Market as being 'significant' or 'extremely significant', 2019

Type of barrier	Share
Complex administrative procedures	79.5%
Different national service rules	71.6%
Inaccessibility to information on rules and requirements	69.1%
Different national product rules	67.0%
Different contractual/legal practices	65.6%
Concerns about resolving commercial or administrative disputes, also because of deficits in legal protection before national or European authorities and courts	60.5%
Differing VAT procedures	60.4%
Insufficient legal/financial information about potential business partners in other countries	58.9%
Problems/uncertainties in posting workers temporarily to another country	58.1%
Issues related to payment recovery	57.4%
Non-VAT related taxation issues	54.2%
Discrimination of foreign enterprises by legislation or national authorities	46.8%
Difficulties in the recognition of professional qualifications and/or meeting other requirements to access a regulated profession	42.2%
Arbitrary public procurement practices	38.2%
Differences in national (online) consumer rights	36.3%
Language barriers	35.8%

Source: (Dahlberg, et al., 2020, p. 116)[6]

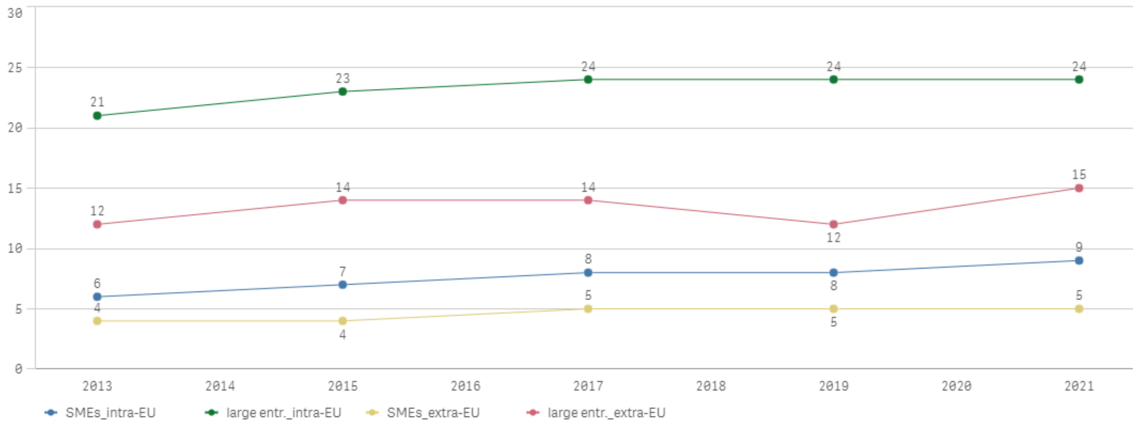
Eurostat survey data (see Chapter 4) can serve as a cross-check on these results, and have been updated more recently, but they cover far fewer indicators.

There is no persuasive evidence that the dozens of laws enacted since 2014 to facilitate cross-border e-commerce within the EU have had a significant positive impact on actual sales (see Figure 3). The share of large EU firms selling cross-border by electronic means within the EU grew to 24 % in 2017 (i.e. before any Digital Single Market reforms could have had any effect) and then remained constant until 2021, the most recent year for which data are available.

[6] Authors' analysis based on (Eurochambres, 2019).

The share of EU SMEs with more than 10 employees reached 8 % in 2017 and grew to 9 % in 2021 – assuming that this one-point difference is not measurement error, it is good (a gain of 12 %) but hardly earth-shattering.

Figure 3. Share of EU firms with e-sales across EU borders



Source: Eurostat European Union survey on ICT usage and e-commerce in enterprises, 2013 – 2021 as reported in (European Commission, 2022)[7]

[7] As with other Eurostat data, not all years are present. Per the Commission, '*This indicator measures the share of businesses that made electronic sales to other EU countries or the rest of the world, respectively. It refers to all manufacturing and services sectors, excluding the financial sector and agriculture. The indicator covers enterprises with at least 10 employees or self-employed persons, therefore excluding micro-enterprises. It distinguishes between small and medium-sized enterprises (SMEs) on the one hand and large enterprises. It also distinguishes between sales made to other EU countries (intra-EU) and sales made to the rest of the world (extra-EU). … Sales taken into account are those made, during the previous calendar year, via any computer networks. This includes websites, electronic data interchange systems and other means of electronic data transfer. It excludes manually typed e-mails.*'

4. Mitigating barriers to cross-border e-commerce

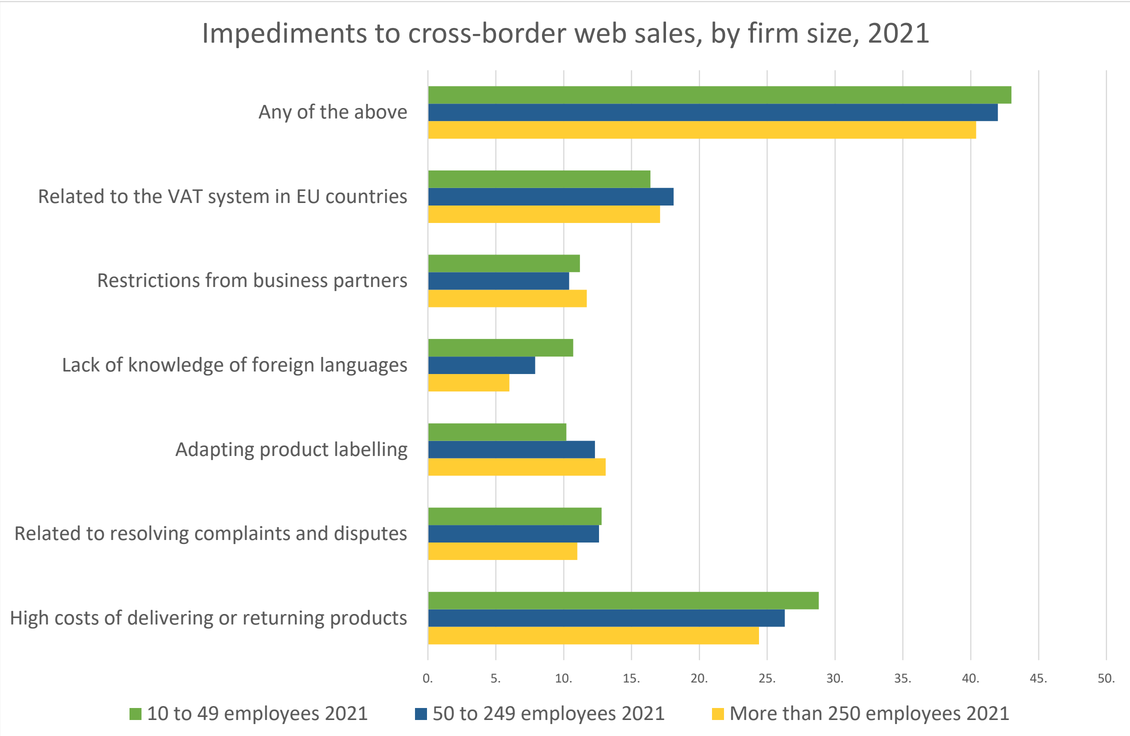
Key Findings

- Survey work in 2021 showed no visible improvement in the indicators that the Digital Single Market had hoped to correct.
- The reasons why are not always clear. Some DSM measures were clearly destined to be ineffective, but others that should have been effective have not yet demonstrated a positive impact.
- VAT was made more complex with the shift in 2015 from country of origin to country of use. The simplification measures subsequently put in place do not yet seem to have effect.
- Geo-blocking does not deal with the problems that consumers in fact perceive. The omission of goods that require shipment is ludicrous, but they cannot be included in the scope of the regulation until more fundamental changes have been made in the physical world – changes to mutual recognition, safety and labelling would be needed, at a minimum.
- Geo-blocking of copyrighted audiovisual content is a serious annoyance to consumers and to some e-merchants. An abrupt change might pose a risk to the amount of new content produced, but probably not as much as most experts assume. Some cautious experimentation would be to better understand what is achievable and what should be avoided.
- With consumer protection, efforts to avoid gold-plating at Member State level have not gone far enough. Careful analysis will be needed to fix this.
- It was obvious from the start that the Parcel Delivery Directive would not lower prices. In reality, prices have been creeping upwards. Legislation is needed to prevent excessive over-pricing of cross-border parcel delivery by national postal operators (NPOs), but this can only be possible alongside some serious re-thinking of NPOs' overall business model.
- The lack of information about rules in other Member States, and challenges in navigating them, have been a recurring theme for e-merchants for many years. SOLVIT could help to solve this, but it is under-performing. The Single Digital Gateway is promising, and has achieved some good initial results, but much more work is needed.
- Evaluating the effects of legislation by means of the Better Regulation framework has been performed rather badly in the current legislative term. As a result – but partly due to the newness of the measures in question – it is difficult to say what should be done to correct some measures.

We have now witnessed a decade of legislative focus on facilitating the free movement of goods and services by mitigating barriers to cross-border e-commerce within the EU. During the 2014-2019 mandate, the EU institutions sought to reduce barriers to cross-border e-commerce by means of close to 40 distinct legislative measures under the aegis of a Digital Single Market strategy. During the current legislative term (2019-2024), numerous additional measures have been enacted, many of which sought to further reduce cross-border frictions in the digital world.

Many of the measures enacted – for instance, the simplification of VAT and enhanced harmonisation of consumer protection – logically *should* have generated benefits. Nonetheless, there is now reason to question whether the measures that were put in place have been effective. It is important to note at the outset that the Digital Single Market sought to address problems identified by e-merchants and by consumers. In multiple surveys, large and small e-merchants identified a range of concerns (Dahlberg, et al., 2020), and these are still visible today (see Figure 4 below).

Figure 4. Impediments to cross-border web sales, by firm size, 2021

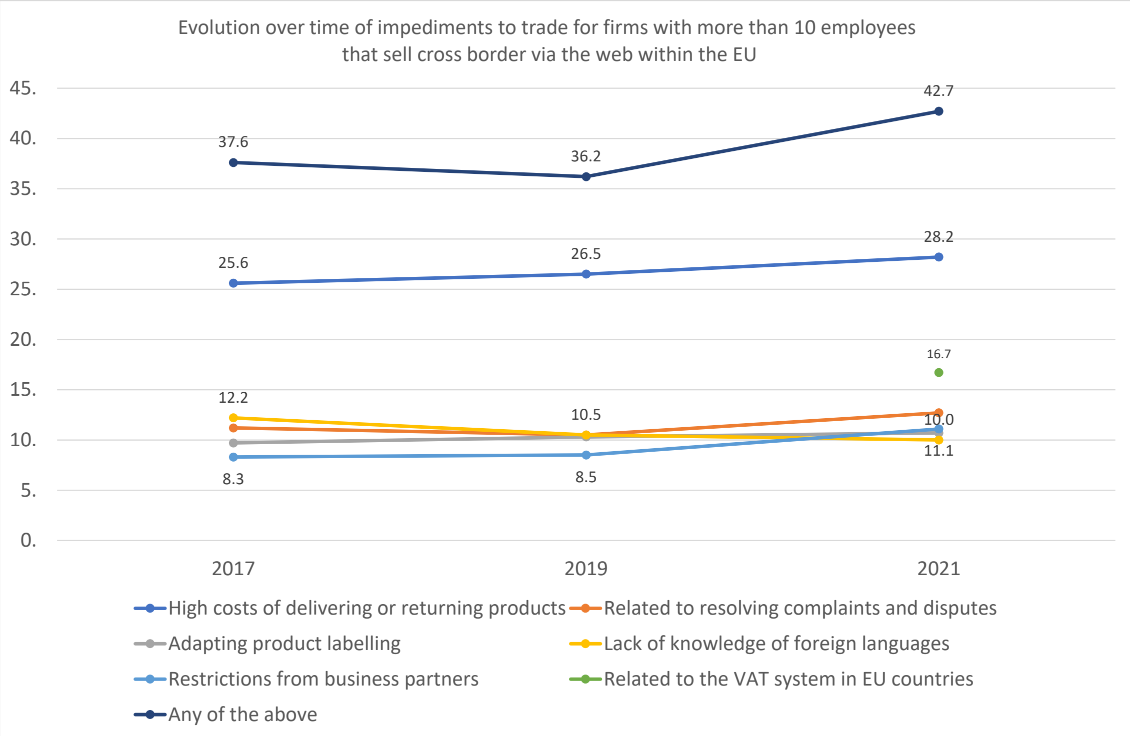


Source: Eurostat data (table isoc_ec_wsobs), analysis by the authors.

Unfortunately, more recent survey results suggest that the merchants perceive no significant improvement in any of these, except for a lack of knowledge of foreign languages (which was not an issue that the Digital Single Market sought to address). In fact, among e-merchants who do business across EU borders, the fraction who perceive problems in one or more crucial areas (delivery and returns, VAT, and so on) actually appears to have increased from 38 % to 43 %.

In other words, **dozens of new laws had no visible positive impact as of 2021 on the Single Market problems that they sought to address. This must be viewed as a surprise, and a cause for serious concern.**

Figure 5. Evolution over time of impediments to trade for firms with more than 10 employees that sell cross border via the web within the EU.



Source: Eurostat data (table isoc_ec_wsobs), analysis by the authors.

4.1 VALUE ADDED TAX (VAT)

The basic mechanisms for VAT are common among the Member States and are set out in EU legal instruments. EU law allows Member States considerable flexibility, however, as to (1) what rates to set for VAT, and which products and services qualify for discounted VAT rates; (2) actual mechanisms on how merchants must pay VAT to national authorities; and (3) actual mechanisms on how VAT for cross-border purchases are charged, credited and/or refunded across the Member States.

The lack of harmonisation can lead to tax competition among the Member States. One can debate whether this is harmful – tax competition might perhaps play a small role in disciplining Member States that would otherwise set unreasonably high rates for various taxes. Be that as it may, it is hard to argue that VAT tax competition is in line with the principles of an integrated EU Single Market.

In the previously cited Eurochambres survey of merchants, 60 % identified 'differing VAT procedures' as a problem (see Figure 2).

The burdens posed by a lack of harmonisation were compounded by an important legislative change enacted a few years ago. Prior to 2015, VAT for cross-border online purchases was in effect charged on a *country of origin* basis (i.e. following the rules of the Member State in which the firm was established). This was helpful for e-merchants because it meant that the e-merchant needed in general to be familiar only with VAT rules for its country. In 2015, the EU switched to a *country of use* regime for goods and for many services to reduce the risk of various forms of tax arbitrage. With this shift, e-merchants were exposed to divergent rules in every Member State in which they did business.

These rules are not fixed for all time. VAT provisions continue to evolve, necessitating updates to software maintained by the e-merchants. Member States typically do not pay sufficient attention to the impact of these costs on merchants, especially on SME e-merchants in other Member States.

The EU institutions have taken several steps to try to mitigate the harmful effects of the 2015 change in VAT arrangements. The strengthening of the *mini One Stop Shop (mini-OSS)* (to cover not only electronic services but also goods) should make life easier for EU e-merchants. If the mini-OSS works well and gains sufficiently widespread acceptance, it could play an important role in addressing many of the challenges that e-merchants face today regarding VAT.

A lack of VAT harmonisation can also lead to double taxation, or to gaps in taxation. There are mechanisms for dealing with this, but they are burdensome, and they do not always work. In some cases, for example, VAT paid in one Member State and that should in principle be credited for refund by another is not in practice refunded (Dahlberg, et al., 2020, p. 121).

Other changes in EU law over the years have sought to reduce distortions, to simplify the collection of VAT, and to reduce fraud and arbitrage. The elimination of VAT exemption under *Low Value Consignment Rule (LVCR)* coupled with the creation of an *Import Mini-OSS* potentially helps with all three. The Commission claims that an evaluation conducted six months after the latest revision of VAT rules came into force (which was on 1 July 2021) shows a range of benefits; however, the report itself does not appear to be publicly available.

As old problems with VAT harmonisation and overall implementation were in part mitigated, new problems have emerged, requiring new solutions. As a notable example, multiple Member States have introduced *Digital Reporting Requirements (DRRs)*;

however, no two Member States implemented the same requirements. Most required periodic reporting, while a few required real time reporting.

The shift to online DRR reporting, together with a shift to mandatory e-invoicing in Italy and a decline in bankruptcies due to Covid-19 public support mechanisms, contributed to a dramatic and unprecedented decline in the EU-27 VAT compliance gap (the difference between the tax revenue that would have been collected in the case of full compliance and the actual VAT receipts) from EUR 127 billion in 2019 to EUR 99 billion in 2020, and EUR 61 billion in 2021 (CASE, Poniatowski, Bonch-Osmolovskiy, Śmietanka, & Sojka, 2023, p. 5).

At the same time, the shift imposed additional transition costs on e-merchants, especially on e-merchants who sell cross-border. These burdens are thought to have been especially problematic for SMEs because the costs have to be funded from a smaller volume of sales and implemented by a smaller and less specialised staff.

At the same time, the growth in e-commerce brought implementation differences among the Member States to the fore – differences as to which party should pay the VAT (the supplier or the e-commerce platform where it was sold), and where exactly the tax was due. Relatedly, and despite the introduction of the OSS, many e-merchants were effectively obliged to register for VAT in multiple Member States.

The Commission attempted on 8 December 2022 to mitigate these new challenges with its proposed VAT in the Digital Age (ViDA) initiative, comprised of amendments to three existing acts. The intent was to impose mandatory real-time DRR reporting and e-invoicing for businesses that operate cross-border within the EU; to reduce the need for multiple VAT registrations by broadening applicability of the One-Stop Shop (OSS) and of VAT reverse charging; and to simplify VAT reporting by broadening the use of the OSS and its international counterpart.

As always, the degree to which implementation must be harmonised has been a topic of debate. As of early 2024, the measures have not been enacted, and our understanding is that substantial disagreements remain. Given that EU action on taxation is possible only when there is unanimity among the Member States, getting these promising reforms enacted is likely proving to be highly challenging.

The measures have the potential to improve harmonisation, but it is too soon to say whether the net effect will be to decrease – rather than increase – the burden on e-merchants, especially SMEs.

Despite the EU's efforts to simplify and harmonise VAT, it continues to bedevil many e-merchants, as is also visible in the Eurostat survey data that is summarised in Figure 4 and Figure 5 above. As recently as 2021, among e-merchants with 10 or more employees who sell cross-border within the EU, 16-18 % of them identify issues related to VAT as an impediment to cross-border sales.

VAT continues to be a complex area that poses a burden both to conventional merchants and to e-merchants who operate cross-border within the EU.

Recommendation 1. The need for consistent implementation of VAT rules among the Member States is likely to require continuous attention from policymakers for many years to come. To this end, the VAT in the Digital Age (ViDA) initiative appears to be promising, but getting it enacted is likely to be challenging.

4.2 GEO-BLOCKING

Geo-blocking occurs when merchants operating in one EU Member State block or limit the ability of prospective customers from other Member States to order their goods or (online) services, a practice that restricts cross-border commerce and specifically cross-border e-commerce. Surveys demonstrate that European consumers are frustrated by the level of geo-blocking; moreover, it is a significant barrier to the Single Market.

A 'mystery shopping exercise' conducted by DG COMP identified four distinct ways in which the online purchasing process might fail. These were:

- denial of access to a website and/or involuntary or automatic re-routing to a website based in a different country, typically with different prices, terms and conditions;
- refusal to sell based on the prospective customer's Member State of residence or establishment;
- refusal to deliver a product or service to the prospective customer's Member State of residence or establishment; and
- refusal to accept payment using payment mechanisms that are common in the prospective customer's Member State of residence or establishment.

The cumulative percentage of shoppers blocked at each of these four stages in the mystery shopping exercise were 2 %, 28 %, 51 %, and 63 %, respectively. In sum, nearly two-thirds of all cross-border purchase attempts failed for one reason of another.

Each geo-blocking practice can take different forms, and each can happen at different stages of the shopping process. Some come into play only after the consumer has wasted considerable time and effort in attempting to make a purchase – but all in vain.

It is thus clear that the Geo-blocking Regulation (GBR) seeks to address a very real impediment to the functioning of the EU Single Market; however, it does so in a way that fails to address the problems that consumers in fact perceive and experience. In fairness, this is not so much a defect of the GBR itself, but rather a reflection of more fundamental Single Market impediments that the GBR alone could not hope to fix.

The key provisions of the GBR are:

- **Article 3** prohibits a merchant from blocking or limiting a customer's access to the trader's online interface (or redirecting the customer to a different website other than the one the customer originally sought) for reasons related to the customer's nationality, place of residence or place of establishment.
- **Article 4** prohibits discrimination (different general conditions of access to goods or services) for reasons related to the customer's nationality, place of residence or place of establishment.
- **Article 5** prohibits the imposition of different conditions for most electronic payment transactions made by credit transfer, direct debit or a card-based payment instrument when made in a currency that the trader accepts.

One might well imagine that this would solve three of the four problems identified in the 'mystery shopping exercise'; in practice, however, its effects are limited by three enormous 'carve outs' in the GBR:

- Goods that require shipment are excluded under Article 4(1) GBR from the GBR's non-discrimination provisions.
- Services '*the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form*' are excluded under Article 4(1)(b) GBR from the GBR's non-discrimination provisions.
- Article 1(3) GBR completely excludes all categories of services that are excluded by Article 2(2) of the Services Directive, including 'audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting.' Audiovisual services are thus excluded from all GBR obligations, not just the non-discrimination obligations.

Excluding goods that require shipment has real and substantial consequences. As the Commission explained in its 2020 short term review of the GBR, '*often the shopping process is stopped at the last stages because the trader does not deliver to the shopper's country, so that when cross-border delivery is requested, only 1 in 3 cross-border shopping attempts was successful in the recent mystery-shopping exercise*.'

The reader might well wonder why the GBR provides such a huge exclusion for goods that require shipment. After all, what other goods would be of interest to the consumer?

Recital 3 GBR explains the reasoning, and unfortunately it is sound. '*This Regulation aims to address unjustified geo-blocking by removing certain barriers to the functioning of the internal market. However, account needs to be taken of the fact that many differences in Member States' legislation, such as those resulting in different national standards or a lack of mutual recognition or harmonisation at Union level, still constitute significant barriers to cross-border trade. Those barriers continue to cause fragmentation of the internal market, often leading traders to engage in geo-blocking practices. The European Parliament, the Council and the Commission should therefore continue to address those barriers with a view to reducing market fragmentation and to completing the internal market.*'

In (Dahlberg, et al., 2020), we explain that substantial problems remain regarding the free movement of goods. A substantial proportion (estimated to be some 82 % (Dahlberg, et al., 2020, p. 49)) of goods have been harmonised at EU level, and for the rest, the principle of mutual recognition is supposed to mean in essence that if the product can be used in one Member State, it can be used in all. Practice diverges widely from theory, however – Member State authorities often block the import of goods that are permitted in other Member States, sometimes for valid reasons, often for questionable reasons.

As we explain in the section of this chapter on 'Insufficient information about applicable rules', this very often obliges the merchant to engage legal help, and fairly often leads the merchant to simply abandon their efforts to import the item. Many other issues frustrate the ability to import goods, including a lack of mutual recognition, labelling requirements, and safety obligations (Dahlberg, et al., 2020). Without a very detailed examination, one cannot quickly say which rules are divergent for legitimate reasons versus those which are divergent due to Member States engaging in protectionism.

What is clear is that under current circumstances, **the virtual world is not independent of the physical world when it comes to ensuring the free movement of goods ordered online**. Until and unless Single Market defects in the physical world are corrected, forcing e-merchants to ship to all Member States would expose them to a broad range of legal liabilities that are difficult to predict or assess.

Recommendation 2. It will not be possible to ensure a free flow of goods ordered in the virtual world until numerous problems in the physical world have been resolved. Despite many years of attempts, with mixed results, it is still necessary to resolve well known challenges with mutual recognition, divergent safety regulations, and divergent labelling requirements.

As mentioned above, the Commission published a short-term review of the GBR in 2020, as was required under the GBR. However, it is rather inconclusive, largely because the law had not been in effect long enough for the effects to be visible. The supporting study (to which this author contributed) contains useful material, but likewise is not fully definitive.

The restriction on services that primarily exist to distribute content subject to copyright limits the applicability of non-discrimination provisions regarding games, music, and electronic publications, but the impact is not so great – games and music are already fairly widely available cross-border, and demand for e-books is greatest in a single Member State or within a single language group because understanding an e-book is heavily dependent on mastery of the language in which it is written (unlike a pop song or a piece of instrumental music). There may be potential benefits in extending the GBR to these media forms, but the effects are complex and the potential gains are not overwhelming.

The total exclusion of copyrighted audiovisual services from the scope of the GBR is quite another matter. Many consumers would like to stream videos cross-border that are currently geo-blocked. The rightsholders vehemently oppose this, arguing that the consequent reduction in their revenues and profits would result in far less audiovisual content being produced in Europe. They also argue that it would distort the market in other ways as well.

A study funded by the industry argues that eliminating geographical discrimination would reduce the anticipated revenues from European works, leading to lower pre-sales investment in the works. This would tend to affect high-budget works more than low, since high-budget works are more dependent on pre-sales funding. They claim that any reduction in audiovisual producer revenue would reduce investment in new audiovisual productions far more, by a factor ranging from three to eight.

Dynamic impacts on financing and production of audiovisual content due to a reduction of revenues (leading to reduced production of new content) are indeed likely, due in part to the peculiarities of audiovisual investments and the pre-sales of rights, but there is room to debate the magnitude of these effects. It is reasonable to expect the two to move in the same direction, but our own analysis suggests that such large multipliers are unlikely. They also seem to be empirically inconsistent with historical trends over the past few years. Empirically, the actual EU-28 revenues for production and post-production have increased 1.7 times as fast as overall revenues from end-users for audiovisual works from 2014-2017, suggesting that a modest multiplier may be present, but that a multiplier from three to eight is implausibly high.

The analysis in the GBR supporting study mentioned above suggests not only that the negative impact on film production has been substantially over-estimated, but also identifies several factors that work in the opposite direction that appear to have been ignored to date. This includes the possibility that being able to access new content will attract new viewers and thus lead to an increase in revenues. But at the end of the day, there is substantial uncertainty in all these estimates.

All of this suggests that a drastic change in policy in this area might lead to negative consequences that are hard to fully foresee. On the other hand, the public desire for change is strong. **Current arrangements cannot be said to be optimal**. With that said, there may be scope to cautiously experiment with selectively making certain kinds of content readily available cross-border to be able to empirically measure elasticities and consequences.

Recommendation 3. The public appetite for cross-border consumption of audiovisual content subject to copyright is high, and the current Geo-blocking Regulation (GBR) does nothing to address it. Fears promoted by the industry that extending the GBR would lead to enormous reduction in revenues, and consequently in the volume of audiovisual content produced, appear to greatly overstate the likely impact; however, the possibility of some negative impact cannot be excluded, and it is uncertain as to how much is likely. For these reasons, we suggest opening up cross-border delivery for a small volume of content as a controlled experiment to quantitatively determine the sensitivity of content production to a loosening of the geographic restrictions on the distribution of content. Exactly how to do this would require careful thought and design.

4.3 CONSUMER PROTECTION RULES

Europe benefits from a nominally harmonised set of horizontal, sector-independent consumer protection measures. As we explained in a previous paper, however, these measures fail to establish full harmonisation. Member States can (and do) go beyond the requirements of the horizontal instruments now in place. In the case of the Unfair Contract Terms Directive (UCTD), for instance, only six of the 27 Member States (22 %) have refrained from going beyond the UCTD's minimum standards: Croatia, Cyprus, Denmark, Ireland, Latvia, and Lithuania.

'Gold plating' of rules on the part of the Member States raises compliance costs for cross-border e-merchants because the e-merchants must be aware of the specificities of every Member State they sell to.

In general, e-merchants appreciate the horizontal approach taken by EU consumer protection law but nonetheless it poses serious challenges. As the Commission has observed *'… the Rome I Regulation [Regulation (EC) No 593/2008] allows contracting parties to choose which law applies to their contract and determines which law applies in the absence of choice. A trader who 'directs his activities' to consumers in another country may either apply the consumer's national law or choose another law (in practice almost always the trader's national law). In this latter case, however, the trader must also respect the mandatory consumer contract law rules of the consumer's country to the extent that those rules provide a higher level of consumer protection. When the trader does not direct his activities to consumers in a specific Member State but agrees to enter into a contract at the consumer's own initiative, consumers do not benefit from the more protective rules of their national law*'. Note that this implies that active sales are treated differently from passive sales.

The Commission is well aware of these problems. As it explained in a 2020 Staff Working Document, '*While the Consumer Rights Directive and the Unfair Commercial Practices Directive follow, in general, a full harmonisation approach (with exceptions in certain areas and allowing Member States several regulatory choices), the other four substantive legal acts (Consumer Sales and Guarantees Directive 1999/44/EC (CSGD); Unfair Contract Terms Directive 93/13/EEC (UCTD); Price Indication Directive 98/6/EC (PID); and Geo-blocking Regulation) provide for minimum harmonisation*.'

The Commission sought to ameliorate this lack of harmonisation by means of two new legislative proposals that were subsequently enacted, namely the Digital Content Directive and the Sale of Goods Directive. Most aspects of the two new Directives did not take effect until 1 January 2022.

Neither really solves the underlying problem, for two main reasons. First, each of the new Directives puts in place maximum harmonisation for certain elements, such as what constitutes conformity, who bears the burden of proof, and the remedies available for lack of conformity. However, many other crucial aspects continue to be discretionary to Member States.

Second, the two new Directives only deal with digital content, digital services and goods. No new legislation has been enacted to address the same lack of harmonisation in other-than-digital content, services and goods[8]. In short, digital is very widespread today, but not everything is digital.

Our interviews in preparing the 2020 European Parliament study on the legal obstacles in Member States to Single Market rules gave us no reason to believe that any of the reforms undertaken in this space had significantly reduced fragmentation among the Member States regarding consumer protection rules.

Very little data is available to ascertain how far fragmentation of EU consumer protection law impacts e-merchants who want to sell cross-border within the EU. We are not aware of any evaluations on these new Directives, and it is too soon in any case. The Commission is apparently planning a REFIT evaluation to assess whether additional action is needed to ensure an equal level of fairness online and offline. The evaluation will look at several EU consumer protection laws, including the Unfair Commercial Practices Directive, the Consumer Rights Directive, and the Unfair Contract Terms Directive.

The Eurostat data presented in Figure 4 and Figure 5, however, strongly suggests that e-merchants continue to worry a great deal about challenges in resolving commercial disputes, and that the situation is not getting better over time.

Recommendation 4. The planned REFIT review of EU consumer protection rules is urgently needed. Even though these rules are nominally horizontal and harmonised, it seems clear that minimum harmonisation is not sufficient. It is likely that further legislation will be needed to reduce fragmentation when Member States implement consumer protection law.

4.4 PARCEL DELIVERY

Parcel delivery may not seem at first blush to be a digital issue, but half of all EU e-commerce is concerned with goods, and goods ordered online must be delivered. Europe's ability to fully capitalise on the growth of e-commerce appears to be limited by the high prices paid for shipping goods across national boundaries within the EU. Concerns over the high cost of parcel delivery cross-border by National Postal Operators (NPOs) led the Commission to put forward a legislative proposal in May 2016. The NPOs are not the only firms that deliver parcels, but because they have historically been subject to universal service obligations, they have been important in delivering parcels to low

[8] Except for instance to the extent that non-digital goods 'incorporate or are inter-connected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions'.

density regions. Giants such as Amazon are likely to be able to exploit the many different ways to deliver parcels, but SMEs are often heavily reliant on the NPOs.

Survey results make clear that concerns over the cost and possible delay associated with delivery, and with returns, are a significant impediment for consumers (see Figure 1), and also to e-merchants, especially SMEs (Figure 4). If anything, the concern has only grown over time (Figure 5).

The concern has been with basic cross-border delivery services, not with express or courier services; with business-to-consumer (B2C) shipments rather than business-to-business (B2B); and primarily with shipments by consumers, micro-enterprises, and SMEs than rather those by large shippers. Detailed analysis of retail and wholesale prices for parcel delivery was historically hard to come by due to a lack of transparency in this industry, but all indications are that (effectively unregulated) cross-border parcel delivery prices set by NPOs were inexplicably high in comparison with (regulated) domestic prices.

The Commission conducted a review of parcel delivery tariffs set by universal service providers and non-universal service providers[9] for parcels of 1 kg and 2 kg with the track and trace feature. The Commission estimates 'that 86 % of the items purchased online in another country weighted less than 2 kg'. The results of their analysis are not encouraging:

> '*The average tariffs for the cross-border delivery of [1 kg and 2 kg] parcels by universal service providers generally remained broadly stable in nominal terms over the period 2019-2021 with the exception of Finland, that experienced an important decrease in cross-border tariffs, and Hungary where there was a substantial increase. Over the same time period many Member States also experienced important increases in tariffs for the domestic delivery of the same parcels, with increases of more than 12 % in eight Member States. … [On] average, cross-border tariffs are from two to nine times more expensive than domestic ones. The ratio did not change much over the three years under review.*
>
> *Average cross-border tariffs of the same parcel categories delivered by non-universal service providers show a steeper percentage tariff increase over the period 2019-2021. In many instances however, the increase of domestic tariffs is even higher. The ratio between average cross-border and domestic tariffs charged by non-universal service providers in 2021 ranges from around 2 … to around 30 …*'

The overall increase in prices can be understood to reflect many factors, not just normal inflationary pressures, and not just a relative absence of productivity gains. The NPOs

[9] Note that only parcel delivery services subject to a universal service obligation are required to be cost-oriented and affordable under the Postal Services Directive.

bear the burden of maintaining an expensive delivery network nationwide with high fixed costs, but at a time when letter volumes are declining, and increased parcel volumes do not fully compensate. But NPOs may be particularly motivated to take a higher margin on cross-border parcel delivery because prices do not tend to be effectively regulated, unlike domestic letters. Moreover, if price elasticity of the e-merchants is low, then taking high mark-ups is in line with Ramsey-Boiteux pricing principles (i.e. for a firm with market power, the highest mark-ups should be taken on the products and services with the lowest price elasticity of demand).

All of this means, in sum, that while bloated cross-border parcel delivery prices represent an economic distortion that impacts cross-border trade within the EU, and thus impacts overall EU productivity, it is an understandable response to the pressures that the NPOs face. The best way to fix the problem is to begin by addressing the underlying mismatch of costs and revenue which all EU NPOs are subject to. Costs could be reduced by easing universal obligations, such as the number of days that letters and parcels must be delivered in; by further reducing the number of remote branch offices; or by forcing more consumers to pick up or drop off mail and parcels from the nearest delivery point. Alternatively, more public subsidies may be needed to cover any losses.

It should come as no surprise that the Parcel Delivery Directive has failed to deliver on its promise of lower prices. As we explained in previous work for the European Parliament:

> '*The Commission's legislative proposal sought (1) to increase the transparency of retail prices for consumers, (2) to increase the information gathering powers of national postal regulatory authorities to collect both wholesale and retail data, (3) to oblige postal regulatory authorities to assess cross-border pricing, and (4) to open up the wholesale parcel delivery networks of the NPOs (which some allege to be priced substantially below cost) to competitive non-NPO parcel delivery services. The legislation as enacted weakened these measures considerably and dropped the wholesale access obligation altogether.*
>
> *Our belief is that the Regulation as enacted will enhance transparency but will have little or no effect on cross-border parcel delivery prices. Given the limited information gathering powers and the dearth of information available to the public and to postal regulatory authorities, it is likely to be some time before this is fully visible. In any case, a second round of legislation specifically aimed at the pricing issues is likely to merit consideration in the coming years.*'

Recommendation 5. Unregulated cross-border parcel delivery prices continue to be unreasonably high relative to domestic parcel delivery prices, and the problem is getting worse over time, not better. New legislation is needed to address unreasonable over-pricing. At the same time, the entire business model of the NPOs is under enormous stress at present – it will be impossible to correct over-pricing of cross-border parcel delivery (the only area of growing profitability for many NPOs) without fixing the NPOs' overall business model to restore profitability. A fundamental re-thinking of the sector's business model is called for. This will likely include measures to either reduce the costs that NPOs bear to implement universal services, or else to increase public subsidies.

4.5 INSUFFICIENT INFORMATION ABOUT APPLICABLE RULES

Merchants have been complaining for many years about the lack of adequate reliable information about Member State rules. Pelkmans has noted that a 'search for compliance could be long and full of uncertainties and/or costly as local advisers or law firms had to be contracted.' In the 2019 Eurochambres business survey, 67 % of firms identified the lack of accessibility to information on rules and requirements as an obstacle to selling cross-border (the third most significant obstacle from a long list of impediments, see Figure 2), and 87 % of firms identified better information on all necessary procedures and formalities to operate in another EU Member State as a necessary improvement for doing cross-border business within the EU.

For a global giant like Amazon, this is presumably only a relatively minor annoyance, but for more typical firms and especially for SMEs who wish to sell in multiple Member States, the cost and difficulty of finding and interpreting information (and subsequently dealing with it) represent an overhead cost that must be carried by a much smaller volume of revenue. An EU-wide solution is clearly called for since it would be too burdensome for SMEs to separately consult information sources in 27 EU Member States (plus EEA countries and the rest). The two main tools that have been put in place to date at EU level are SOLVIT and the Single Digital Gateway (SDG*)*. When it comes to solving the problems of cross-border e-commerce, however, SOLVIT seems to be of limited effectiveness, while it appears to be too early to judge the SDG's effectiveness.

When firms encounter obstacles to the free movement of goods, they can turn to the informal problem-solving SOLVIT network. SOLVIT's aim is to remove unjustified obstacles to free movement via informal means of dialogue and cooperation between the SOLVIT centres in the respective Member States, thus avoiding more complex and lengthier formal, legal procedures. The system appears to benefit those who use it for problems such as the movement of persons, but it seems to be less effective in dealing with cross-border e-commerce.

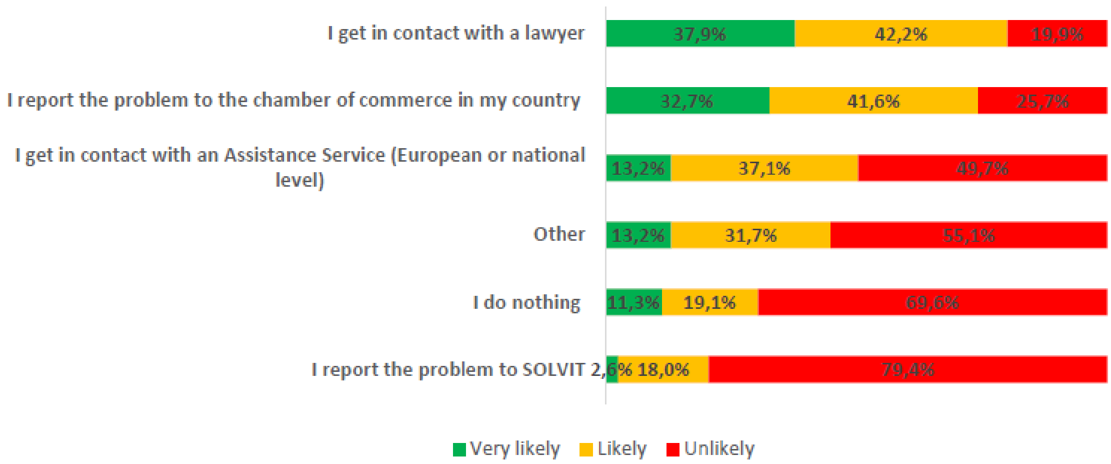
At one level, SOLVIT could be said to constitute an important success story. An assessment issued on the twentieth anniversary of SOLVIT's founding found that the number of cases had grown from 1 308 cases in 2011 to 2 455 in 2021, and that 85 % of the 28 600 cases that had been lodged with SOLVIT over the full 20 year period had been successfully resolved.

SOLVIT's role in dealing with requests by businesses (including micro-SMEs) rather than individuals has steadily grown over the years – as the Commission noted in its twentieth anniversary report, '*SOLVIT regularly receives business requests (including many requests from the self-employed) for assistance with problems linked to cross-border provision of services, recognition of professional qualifications, cross-border road transport, posting issues, VAT reimbursement, conformity assessments, CE marking for product conformity, national product labelling and marketing requirements*.' Based on experience with the SDG, we conjecture that about a fifth of the cases may have involved business users rather than individuals.

Despite the EU's efforts over many years to try to help merchants address Single Market problems, the sad reality is that most merchants contact a lawyer or report the problem to the national chamber of commerce. The 2 455 SOLVIT cases reported in 2021 presumably represent not more than 500 business cases, which is surely a tiny fraction of the latent demand.

In the 2019 Eurochambres survey, only about a fifth were likely or very likely to use SOLVIT to try to resolve the problem (see Figure 6). A substantially greater proportion were likely instead either to contact a lawyer, or to simply give up – they presumably judged it as being too great an effort, or the prospects of success as being too small – or both.

Figure 6. Actions that businesses take when confronted with a Single Market obstacle, 2019



Source: Eurochambres, 2019 as cited in Dahlberg et al.,2020.

There are many possible explanations for SOLVIT's relative ineffectiveness. Inadequate staffing in some Member States is probably a major factor – as the Commission itself has acknowledged. Second, merchants may simply not be aware of SOLVIT. Third, SOLVIT cannot come into play until a merchant has already started to export and has received a negative decision concerning the export of their product from the local authority (including possibly being fined). Fourth, most complaints to SOLVIT are rejected (53 % in 2021) – merchants are presumably aware of this and are not motivated to waste their time.

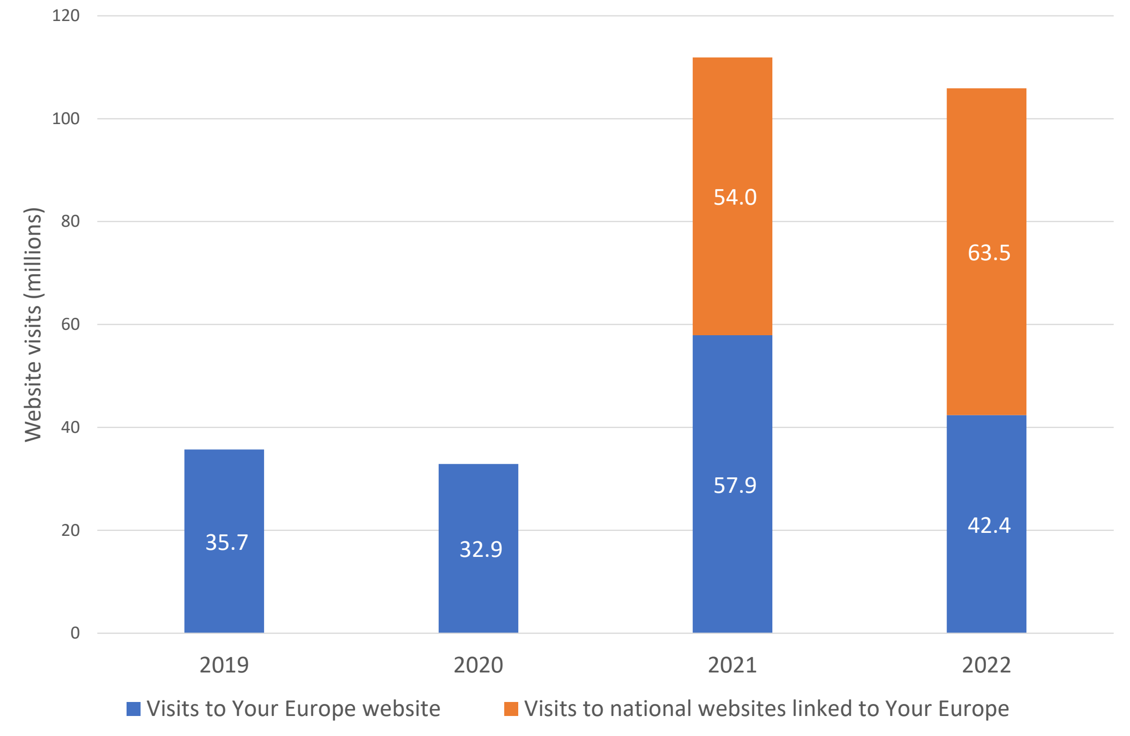
Recommendation 6. In its present form, SOLVIT is not effective in addressing the needs of merchants for cross-border physical and vertical commerce among the Member States. An evaluation is urgently needed, followed by concrete action at EU and Member State level.

The SDG is intended to provide a convenient information repository. It includes an obligation for the Member States to make 21 significant procedures fully available online by December 2023.

Large parts of the SDG appear to be fully operational today. Effective implementation is heavily dependent on the Member States, and it is generally the case that they implement at different speeds, EU legal requirements notwithstanding. Compliance in this case appears, however, to have been reasonably good – as of January 2023, Member States had notified 40 776 web pages under the SDG, covering 80 % of the areas required by the SDG Regulation.

According to the Commission's preliminary evaluation, the SDG is seeing significant use by the public. In 2021 and again in 2022, the combined number of visits to the *Your Europe* website and to Member State websites linked to *Your Europe* was more than 100 million (see Figure 7). Business users spent more than 120 000 hours on *Your Europe* during 2022.

Figure 7. Visits per year to Single Digital Gateway (SDG) websites



Source: Author based on European Commission, 2023.

The real question is, however, how the level of use compares to the actual needs of businesses, especially SMEs. As is often the case, the Commission's evaluation describes the implementation of measures that were required by law, without addressing the question of whether the problem for which the law was enacted has – in fact – been mitigated.

The 2019 Eurochambres survey data indicate that divergent national practices regarding products and services, together with a lack of access to information about these national practices, have constituted a major impediment to cross-border sales in the EU (see Figure 2). The SDG should in principle help, but the lack of any visible improvement in e-merchants' sentiment to a wide range of known cross-border impediments as of 2021 suggests that the problem is far from being solved.

In the absence of data, we can ask whether (1) e-merchants are unaware of the SDG, (2) whether the SDG website and tools are of sufficient quality, (3) whether the tools in the SDG do not go far enough, and (4) whether e-merchants choose not to use the SDG for some other reason.

As far as user awareness is concerned, the Commission has (to its credit) carried out digital roadshows in 21 Member States, and ran advertisements on Twitter (now X), Facebook, LinkedIn, and Google. Until survey data representative of the full community of e-merchants are available, it is difficult to say more.

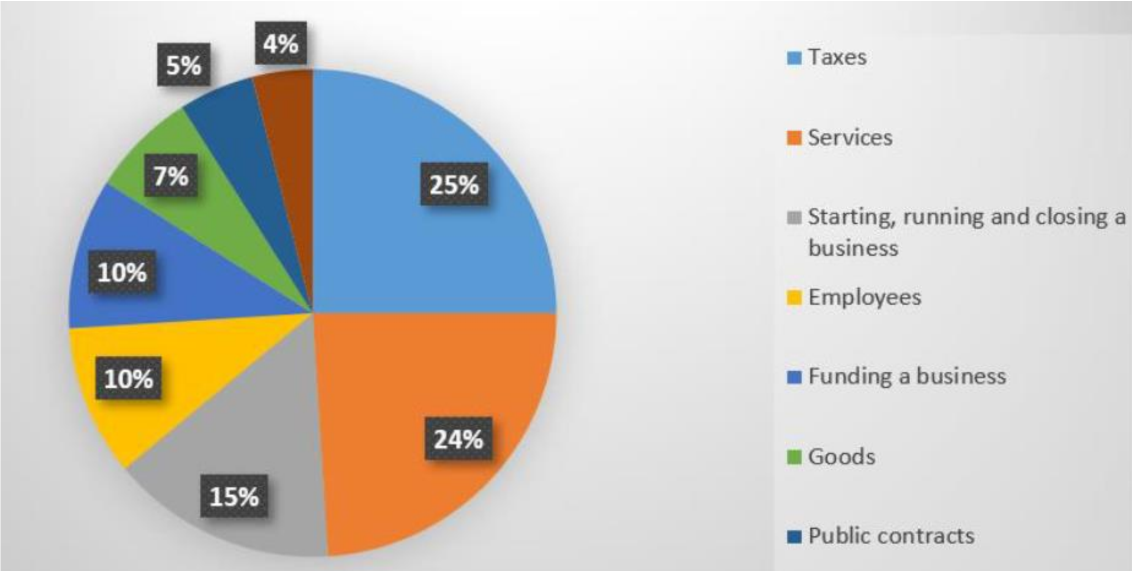
As far as the quality of the website is concerned, user satisfaction among website users appears to be reasonably high – they give the service 4.3 stars out of 5. Again, these results appear to reflect only those who have already used the website, and the degree to which the results are free of self-selection bias is unclear.

As to the question of whether existing tools go far enough, it appears that a great deal of attention has been paid to making documents available and findable, and some attention to ensure that they have been translated into a commonly used language (typically English), all of which is very positive. With that said, however, it appears that the **SDG does not yet go very far in solving problems**. Pointers to seven specialised assistance centres were added at the end of 2020, and pointers to SOLVIT and two other general purpose assistance centres. The Commission reports that SDG assistance services were invoked in 6.5 million cases in 2021 and 2022 (combined), of which 1.2 million were business cases. This may sound impressive, but in fact almost all these cases involved employment inquiries by prospective employees or employers. In any event, these statistics are not very useful without knowing how many problems were *not* referred through the SDG, and why not, and how they were in fact dealt with instead.

This leaves the question of whether the SDG is really doing enough to mitigate the underlying problem, and if not, why not. Our perception is that the best way to answer these fundamental questions would be with unbiased survey data of the business community (not just those who already use the SDG), ideally conducted by Eurostat.

One potentially useful side-effect of the SDG is the related Single Market Obstacle Tool (SMOT*)*, which enables consumers and businesses to report perceived Single Market obstacles (but not necessarily to get them corrected). Since the end of 2020, more than 1 500 obstacles have been reported, about a fifth of them by businesses. In line with the survey results reported in Chapter 3, taxes play a large role (see Figure 8).

Figure 8. Obstacles reported by businesses in the Single Market Obstacle Tool (SMOT) since December 2020



Source: European Commission, 2023

The Commission's future plans for the SDG are ambitious – as well they should be – and the goal is worthy, but our assessment is that the timeframes envisioned will prove to be wildly over-optimistic. The Commission intends to introduce a Once-Only Technical System (OOTS*)* to ensure that the procedures that are available within a Member State can be accessed by cross-border users in a non-discriminatory way. The Commission appears to believe that the submission made in one Member State will provide the evidence required in another.

More than 15 years of experience with attempts to use health data cross-border suggests that this view is naïve in the extreme. If underlying delivery systems are substantially different, the integration of electronic systems will prove to be vexing (see Chapter 5). Simply sprinkling 'software pixie dust' will not in and of itself solve this problem.

The Commission also proposes to integrate other sources of complaints about cross-border challenges with those generated by the SDG. This is a promising idea and should be pursued further.

Finally, the Commission proposes to integrate Large Language Models (LLMs) and other AI tools into the SDG. This is extremely promising, but also entails complex risks. It is well established that LLMs can sometimes arrive at blatantly false conclusions (AI 'hallucinations'), but can present them confidently and persuasively. If the SDG were perceived as doing so, it might undermine confidence in the reliability and authoritativeness of its results. And if a user makes bad decisions based on false or misleading information from the SDG, who bears the legal liability?

Recommendation 7. The Single Digital Gateway seems to have very substantial promise, and good progress has been made with implementation, with further enhancements planned. Unfortunately, it is not possible to judge today whether it is fully effective in addressing the underlying problems. Real surveys and tools need to be put in place.

4.6 Overall

A serious concern, in this author's view and in line with Figure 5 in Chapter 4, is that **the apparent lack of effectiveness of numerous EU laws has apparently not yet been noticed. How can this be?**

Much of the data that would be needed to determine why so many laws have been slow to demonstrate effectiveness is missing. It must be said in fairness that, for many measures, there has simply not been enough time since the relevant legislation came into force.

But defects in the EU's Better Regulation process must also be highlighted.

- A quick pouring over of documents published by the Commission suggests that the number of *ex-post* evaluations being undertaken per year is substantially less than the number of *ex-ante* impact assessments (also when one considers an expected lag of perhaps five years between the two).
- The impact assessment is supposed to already highlight the data that will be required for subsequent evaluation. We suspect that this is not being done with the care that it deserves. Moreover, there seems to be a tendency to evaluate measures based on the direct effects of their provisions, rather than on the more fundamental question of the degree to which they have actually mitigated the problem that the law was brought into force to address.
- The Commission is responsible for evaluation, but the Commission is not a neutral party. For most measures, they can be expected to have a bias to 'wave things through', identifying at most minor opportunities for improvement. For those where the Commission wants to justify further work, they can be expected to have the opposite bias. The European Parliament's Impact Assessment team could potentially serve as a corrective, but they have minimal resources; moreover, they only work on topics that are requested from the political level, so again they cannot be viewed as providing a fully neutral check and balance. The Court of Auditors could in principle serve as a proper corrective, but they rarely do so at present.

Recommendation 8. Detailed study is warranted to determine whether the many EU legislative measures put in place over the past decade to reduce cross-border frictions with digital transactions have truly been effective. If they have not been effective, it needs to be determined why not.

Recommendation 9. The Better Regulation process, and in particular the ex-post evaluation portion of Better Regulation, appears to be urgently in need of ex-post evaluation itself (i.e. REFIT). The process needs to be independent of the Commission, which is subject to a conflict of interest in evaluating laws that it itself proposed. Better planning is needed when the initial legislative proposal is made to ensure that the data that will eventually be needed for evaluation is captured no later than the time at which the new legislation comes into force.

5. Cross-border e-Health in the EU

Key Findings

- The EU has always had a role in public health but has been constrained by the fact that healthcare delivery is primarily a Member State competence.
- Achieving cross-border e-Health in the EU has a long and chequered history. Efforts to facilitate cross-border e-Health, and to foster the interoperability of electronic health records to enable cross-border e-Health, have been ongoing for more than a decade, but have been historically ineffective.
- A new legislative initiative on Electronic Health Data Spaces (EHDS), however, holds substantial promise, provided that it can be effectively implemented by the Member States.
- EHDS seeks to ensure that health data is available in digital form; that every patient has a right to have his or her personal data transferred to specialists of his or her choice; and that anonymised or pseudonymised data is available for industry research and for public health experts.

The EU has always had a role in public health but has been constrained by the fact that health care delivery is primarily a Member State competence. The EU has only a subsidiary supporting role – with that said, however, the EU's competence is greatest when it comes to achieving cross-border interoperability. EU approaches to health data have struggled due to (1) uncertain demand for cross-border delivery of e-Health services; (2) impediments posed by the simultaneous need to maintain the privacy and confidentiality of sensitive health data; (3) insufficient incentives for Member States and institutions to participate in data-pooling arrangements; (4) the lack of a strong mandate to proceed at EU level (subsidiarity); and (5) the risk of problematic interactions with other EU and national legal instruments. The Covid-19 pandemic raised public awareness of the need for greater EU-wide cooperation, for instance in procuring vaccines but the Treaties do not yet reflect this.

Challenges such as these were clearly recognised by the Commission as early as 2008: '*Lack of interoperability of electronic health record systems is one of the major obstacles for realising the social and economic benefits of eHealth in the Community. Market fragmentation in eHealth is aggravated by the lack of technical and semantic interoperability. The health information and communication systems and standards currently used in Member States are often incompatible and do not facilitate access to vital information for provision of safe and good quality healthcare across different Member States.*'

In previous work, we reflected on why initiatives such as the epSOS Large Scale Pilot dating back to 2008, and even a Patients' Rights Directive had delivered so little of immediate practical value, and on what might be needed going forward:

> '*The challenges in implementing ubiquitous, fully integrated and interoperable eHealth systems at European level have very little to do with the technology of individual deployments; rather, they have a great deal to do with diversity in the underlying health care systems, inconsistencies in the semantics of underlying data, and the need to ensure the privacy, integrity and security of sensitive individual health data.*
>
> *At the same time, it is important to bear in mind that e-Health is not a single application, but rather a complex constellation of interrelated activities [such as] e-pharmacy, home care, and exchange of health records.*
>
> *Achieving integrated and/or interoperable solutions at European level is not easy for any of these systems. Our national case studies are not encouraging. Even the advanced ubiquitous systems in Estonia, for example, do not permit ePharmacy orders to be placed from another Member State. The Netherlands found it impractical to implement fully coordinated systems even at national level, to say nothing of European level! Moreover, they encountered significant implementation delays due to concerns about the privacy of sensitive health data due to the use of a U.S.-based contractor.*
>
> *We consider the automated exchange of health records to represent particularly promising and fertile ground [for further initiatives at EU level]. Another promising area is the fulfilment of prescriptions issued in one Member to an individual whose domicile (and health care coverage) are in another Member State. These areas are promising, but both pose numerous complexity and implementation challenges*.'

There is now a potential for real, significant, positive change. Capitalising on the public sentiment for a stronger EU role, the European Commission submitted a legislative proposal for a European Health Data Space (EHDS) on 3 May 2022. The European Parliament and Council reached a political agreement on the EHDS on 15 March 2024, which implies that it will be fully enacted during the current legislative term.

The EHDS (in its Recital 67) expresses its objectives as being '*to empower natural persons through increased control of their personal health data and support their free movement by ensuring that health data follows them; to foster a genuine single market for digital health services and products; [and] to ensure a consistent and efficient framework for the reuse of natural persons' health data for research, innovation, policy-making and regulatory activities*.'

These two goals correspond respectively to *primary use* and *secondary use* of health care data. The EHDS defines the primary use of health data to support or provide direct individual healthcare delivery to the data subject. Primary use is linked to personal data access and portability rights under the GDPR and, by extension, for patients' personal health data. Patients often encounter difficulties in exercising this right. The EHDS seeks to facilitate health data portability and reduce transaction costs associated with that portability. Secondary use is defined as the use of individual-level (personal or non-personal) health data, or aggregated datasets, for the purpose of supporting research, innovation, policymaking, regulatory activities and other uses.

At the legal level, current laws and practices in some Member States already in part reflect the goals of the EHDS, but Member State laws for primary and secondary use of electronic health data vary enormously. Member State practices are also shaped by professional rules and insurer practices.

The EHDS can be expected to have complex interactions with the Data Act, GDPR, Data Governance Act (DGA), and other current or anticipated EU laws. The EHDS legislative proposal already addressed some overlaps, but the risk of unintended overlaps and incoherence manifesting during implementation is nonetheless substantial.

For primary use, the EHDS' economic justification is largely based on (1) enabling natural persons to obtain better care by reducing information asymmetries between providers and users and health services, and thus facilitating informed choice, and (2) enabling health service providers to provide better care because the individual can grant them access to his or her electronic health data held by others.

For secondary use, the economic benefits of aggregating data from multiple sources for research and public health planning are clear, notably including the faster and more cost-effective development of new drugs and medical procedures and achieving better public health decisions. Secondary use is also likely to reduce information asymmetries between medical service producers and health insurance providers, thus strengthening competition between healthcare providers, which might in turn strengthen incentives to provide more patient-centric health services.

There is a serious risk that Member States may drag their heels on implementation, even though most recognise the EHDS' value. Many factors contribute to this risk. First, for example, Member States tend to be fiercely protective of their exclusive control over healthcare services. Second, EHDS generates costs that may not be fully compensated by funding from the EU budget. Third, implementation may simply not be accorded sufficient priority by Member States that have to deal with many other challenges, some of which may be perceived as even more urgent.

Recommendation 10. The EU should use its good offices to promote prompt, full and effective implementation of the new EHDS by Member States, while fully recognising the principle of subsidiarity.

6. Cross-border e-Finance in the EU

Key Findings

- The move from *Open Banking* (with the PSD 2 Regulation) to *Open Finance* (with the proposed Financial Data Access Regulation (FIDA)) is promising not only as a means to stimulate innovation, market entry and competition, but also because it potentially enables innovative firms that are not tied to a single Member State to enter the market.
- The measure, which was put forward in June 2023, might conceivably be enacted in the current term – however, time is running out.
- Our assessment is that this is a good legislative proposal overall but there are a few areas where we recommend further attention.

The digital economy has the potential to be a key growth driver in Europe. Financial services have historically been subject to national dominant players (e.g. large banks) that hoarded data and effectively limited competition. However, new actors, new business models, and new non-bank forms of credit have begun to emerge in recent years. There is now the potential to unlock substantial additional consumer welfare by enabling new products and services and fostering more competition.

Access to data and a sound regulatory framework for data sharing will be key in this process. The EU is seeking to progress from its model of *Open Banking*, which mandated data sharing in the payments system, to *Open Finance*, which is to apply to a wider set of financial sector actors and data types. The overarching objectives are to increase competition through offering a wide range of financial services, to provide greater consumer choice, and to facilitate the market entry of new and innovative financial service providers.

A key instrument in doing so is the Financial Data Access Regulation (FIDA), which was proposed by the EU Commission in June 2023. FIDA seeks to provide (1) obligations on a wide range of incumbent data holder financial institutions to provide data and in some cases interoperability with an even wider range of incumbent and new data user service providers; (2) standards that make interoperability and portability efficient, secure, respectful of consumer privacy, and cost-effective, including for cross-border operation; and (3) a compensation model that provides the right incentives to all parties.

FIDA is important in the Single Market discussion because it potentially reduces the dominance of large financial institutions in each Member State and is instead conducive to new non-bank entities that need not be limited to a single Member State.

Our overall assessment is that in nearly all respects, the FIDA proposal is promising and well thought out. We believe, however, that it will be necessary to strengthen the resources and (possibly) the mandates of EU-level supervisors (EBA, EIOPA and ESMA) to reflect Open Finance's new demands.

We also worry that the proposed law likely needs further work before enactment to ensure that the financial data sharing schemes can fulfil their function of developing and enforcing standards for data sharing, and especially their role in establishing the maximum compensation level for data. A major concern is the lack of clarity when data holders and data users do not agree on which standards and which maximum compensation level should be used to govern the new regime.

Recommendation 11. The Financial Data Access Regulation (FIDA) is promising and deserves prompt enactment. It potentially helps to mitigate the dominance of powerful financial service incumbents that operate at Member State level. Before enactment, we urge the co-legislators to ensure that EU supervisory authorities will be adequately staffed to implement the new rules. We also urge the co-legislators to clarify which standards apply to data transfers, and which rules about maximum compensation, in cases where more than one answer is possible.

7. New laws to deal with online platforms raise new risks for harmonisation

Key Findings

- Numerous laws have been enacted in recent years, or are about to be enacted, to deal with online platforms and other digital services. These include the General Data Protection Regulation (GDPR), the Digital Markets Act (DMA), the Digital Services Act (DSA), the Data Act, and the Artificial Intelligence (AI) Act.
- For each of these, it is necessary to ensure consistent coordination between the EU institutions and the Member States, and consistent implementation among the Member States.
- Each piece of legislation has its own way of doing so, and some are likely to work better than others – the GDPR's design was clearly flawed.
- New harmonisation problems might well emerge. Continued surveillance is called for.

In the previous legislative term and the present term, numerous important laws relating to digital services have been enacted or are about to be enacted. Noteworthy among them are the General Data Protection Regulation (GDPR), the European Electronic Communications Code (EECC), the Digital Markets Act (DMA), the Digital Services Act (DSA), the Data Act, the Data Governance Act, and the Artificial Intelligence (AI) Act. For each of these, it is necessary to ensure consistent coordination between the EU institutions and the Member States, and consistent implementation among the Member States.

Each piece of legislation has its own way of attempting to achieve this kind of coherence because the nature of the coordination required depends on the specificities of the law in question. The absence of a single, consistent approach is not *per se* a defect - the measures address different problems and do so in different ways. One cannot expect a one-size-fits-all solution for these very diverse laws. Nonetheless, the risk remains that the mechanisms chosen for some of the laws might not function well.

The DMA is unlikely to experience problems of this nature. The Commission mostly has exclusive power here. This is appropriate, since the firms that the DMA regulates operate more or less consistently across the EU. The risk of the DMA raising problems regarding harmonisation appear to be minimal.

For the DMA, the DSA, the Data Act, and the AI Act, it is much too soon to say whether there will be harmonisation problems. For the GDPR, however, experience demonstrates that the 'One-Stop Shop[10]' approach has performed badly. With the GDPR One-Stop Shop, responsibility rests for most purposes with the national Supervisory Authority (also referred to as a Data Protection Authority, or DPA) where the firm in question has its EU headquarters. This system sought to avoid inconsistent decisions among Member State DPAs – many limitations became obvious in practice, however.

First, many of the most challenging issues for the protection of personal data arise from the practices of the five 'GAFAM' firms (Google, Apple, Facebook (now Meta), Amazon and Microsoft). Four of these firms have their EU headquarters in Ireland, the fifth in Luxembourg. The GDPR One-Stop Shop has thus had the effect of making two small Member States responsible for extremely high stakes cases, meaning that they bear a disproportionate burden[11].

Relatedly, however, there is also an incentives problem. These Member States work hard to attract Multi-National Enterprises (MNEs) by means of a favourable regulatory climate and (to date, at least) favourable corporate taxation rates. One can question whether the Member States in general, and especially these two Member States in particular, will be highly motivated to aggressively pursue cases, or to bring them to a rapid conclusion. Most DPAs (80%) claim that they are under-staffed, but the actual staff counts suggest that this is especially the case for Ireland and Luxembourg (not relative to population, but rather relative to the work that the need to do). There is likewise reason to wonder whether the level of cases and of fines in these two Member States (when compared with those of Germany, France or Italy) is consistent with effective enforcement (European Data Protection Board (EDPB), 2021).

It is too soon to say what problems might emerge because of this plethora of new laws, but there are clear risks. Attentive surveillance is called for in the coming years, as the new laws come into force.

[10] Not to be confused with the One-Stop Shop for VAT.

[11] A recent ruling of the European Court of Justice has made it possible for a Supervisory Authority other than the Lead Supervisory Authority under the One-Stop Shop to intervene in urgent cases if the Lead Supervisory Authority fails to act or fails to provide sincere cooperation. How this ruling will change things in practice remains to be seen.

8. The way forward

Key Findings

- The Single Market is of fundamental importance in achieving economies of scale that the EU needs to fuel its innovation engine.
- The Single Market is, regrettably, still an incomplete work in progress, both in the physical world and in the digital world.
- Many measures were put in place, either during the previous legislative mandate or during the current mandate, to try to strengthen cross-border synergies within the EU. Unfortunately, there is reason to question whether they have been collectively effective.
- There is no single 'silver bullet' to achieve a true Single Market in the digital world. There are multiple thematic areas, each of which poses distinct challenges, each of which calls in turn for nuanced and differentiated solutions.
- As much as we might want to treat the digital world as an entity distinct from the physical world, they are intrinsically linked. Many of the challenges in the digital world flow from shortcomings in the physical world.

The previous chapters provide general background on the challenges that the EU faces in implementing a Single Market in the digital world and have identified a wide range of potentially mitigating measures. Please see below a recap of the detailed recommendations developed elsewhere in the report, together with the page they appear on:

Recommendation 1. The need for consistent implementation of VAT rules among the Member States is likely to require continuous attention from policymakers for many years to come. To this end, the VAT in the Digital Age (ViDA) initiative appears to be promising, but getting it enacted is likely to be challenging. (p. 15)

Recommendation 2. It will not be possible to ensure a free flow of goods ordered in the virtual world until numerous problems in the physical world have been resolved. Despite many years of attempts, with mixed results, it is still necessary to resolve well known challenges with mutual recognition, divergent safety regulations, and divergent labelling requirements. (p. 18)

Recommendation 3. The public appetite for cross-border consumption of audiovisual content subject to copyright is high, and the current Geo-blocking Regulation (GBR) does nothing to address it. Fears promoted by the industry that extending the GBR would lead to enormous reduction in revenues, and consequently in the volume of audiovisual content produced, appear to greatly overstate the likely impact; however, the possibility of some negative impact cannot be excluded, and it is uncertain as to how much is likely.

For these reasons, we suggest opening up cross-border delivery for a small volume of content as a controlled experiment to quantitatively determine the sensitivity of content production to a loosening of the geographic restrictions on the distribution of content. Exactly how to do this would require careful thought and design. (p. 19)

Recommendation 4. The planned REFIT review of EU consumer protection rules is urgently needed. Even though these rules are nominally horizontal and harmonised, it seems clear that minimum harmonisation is not sufficient. It is likely that further legislation will be needed to reduce fragmentation when Member States implement consumer protection law. (p. 21)

Recommendation 5. Unregulated cross-border parcel delivery prices continue to be unreasonably high relative to domestic parcel delivery prices, and the problem is getting worse over time, not better. New legislation is needed to address unreasonable over-pricing. At the same time, the entire business model of the NPOs is under enormous stress at present – it will be impossible to correct over-pricing of cross-border parcel delivery (the only area of growing profitability for many NPOs) without fixing the NPOs' overall business model to restore profitability. A fundamental re-thinking of the sector's business model is called for. This will likely include measures to either reduce the costs that NPOs bear to implement universal services, or else to increase public subsidies. (p. 24)

Recommendation 6. In its present form, SOLVIT is not effective in addressing the needs of merchants for cross-border physical and vertical commerce among the Member States. An evaluation is urgently needed, followed by concrete action at EU and Member State level. (p. 26)

Recommendation 7. The Single Digital Gateway seems to have very substantial promise, and good progress has been made with implementation, with further enhancements planned. Unfortunately, it is not possible to judge today whether it is fully effective in addressing the underlying problems. Real surveys and tools need to be put in place. (p. 30)

Recommendation 8. Detailed study is warranted to determine whether the many EU legislative measures put in place over the past decade to reduce cross-border frictions with digital transactions have truly been effective. If they have not been effective, it needs to be determined why not. (p. 31)

Recommendation 9. The Better Regulation process, and in particular the ex-post evaluation portion of Better Regulation, appears to be urgently in need of ex-post evaluation itself (i.e. REFIT). The process needs to be independent of the Commission, which is subject to a conflict of interest in evaluating laws that it itself proposed. Better planning is needed when the initial legislative proposal is made to ensure that the data that will eventually be needed for evaluation is captured no later than the time at which the new legislation comes into force. (p. 31)

Recommendation 10. The EU should use its good offices to promote prompt, full and effective implementation of the new EHDS by Member States, while fully recognising the principle of subsidiarity. (p. 34)

Recommendation 11. The Financial Data Access Regulation (FIDA) is promising and deserves prompt enactment. It potentially helps to mitigate the dominance of powerful financial service incumbents that operate at Member State level. Before enactment, we urge the co-legislators to ensure that EU supervisory authorities will be adequately staffed to implement the new rules. We also urge the co-legislators to clarify which standards apply to data transfers, and which rules about maximum compensation, in cases where more than one answer is possible. (p. 36)

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