

Non-paper from The Netherlands on input for the Strategic Report

This non-paper provides input for the Strategic report. The structure of this non-paper is based on the different elements of the call of the COMPET Council and the Single Market part of the March package, i.e. the communication on Single Market barriers and the Long-term action plan for better implementation and enforcement of Single Market rules. There are three areas in which further action is needed and this paper provides suggestions on how to:

- I. address and remove Single Market barriers,
- II. improve the implementation and enforcement of Single Market rules,
- III. draw some of the lessons that we can learn from the COVID-19 crisis including our procedures and processes during a crisis.

Additionally, this paper discusses potential ways forward on these issues including a clear role and responsibility of Member States, the COMPET Council and SMET. These tracks are interlinked and should reinforce each other. **It is essential for Member States to show ownership on both tracks.** Member States are responsible for barriers and enforcement. It is also up to Member States to take concrete steps in tackling these issues. Therefore a roadmap is needed which sets out how Member States will work on strengthening the Single Market.

As time is relatively short, this paper sets out a **framework** for priority actions including a follow-up to the Strategic report. Nevertheless, given the volatility of the crisis and its impact on the Single Market, it is critical that we do not lose time on addressing these issues. A well-functioning and strong Single Market is key to our recovery efforts and economic growth. That is why Member States should aim to work on all levels and within each tracks.

The call for the Strategic Report in the COMPET conclusions

The COMPET conclusions of 21 September 2020 called for an *annual Strategic report* to be presented by the Commission by 15 January 2021. This report should:

- a. take stock of the state of implementation of the 2020 Enforcement Action Plan and progress in addressing barriers in the Single Market, including through measures of the recovery plan, taking into account the work of SMET;
- b. assess the resilience of the Single Market, by first drawing lessons from the COVID-19 crisis and evaluating the robustness of existing procedures; and
- c. analyse on this basis the need for further regulatory and non-regulatory actions.

The Council highlighted that this report will provide the foundation to work and follow-up the implementation of actions and milestones in Council with Member States on a rolling basis.

I. Barriers

The Single Market barriers communication provides a good foundation and several Member States have conducted research themselves on how to remove barriers in their own countries and across borders. It is critical that we now translate this knowledge into concrete and practical actions.. Therefore, it would be helpful if the Strategic report defines the scope for next steps on removing barriers, also based on recent discussions in SMET. This scope should at least include a list of priority topics and/or barriers. The Netherlands strongly recommends to include the following pressing barriers in the list:

- posting of workers,
- A1 forms,
- Inspections,
- E-governance,
- licences and authorisations,
- liability insurance,
- harmonized standards,
- taxation/VAT.

This list is based on the Single Market barriers report, our own research and analysis including consultations with stakeholders, ensuring a bottom-up approach. **Facts and needs from businesses** has been the guiding principle in making this selection. Further actions should be

evidence-based. Actions with regard to the aforementioned topics are relevant for the **free movement of services, goods and people**. Services, goods and people are interlinked and often difficult to separate. A modern and strong European industry is dependent on services and digital developments and both are part of our value chains. If we want to meet our strategic objectives and ambitions, it is critical to follow an integrated approach.

Annex I to this non-paper contains a list of specific actions which Member States could take in order to work on removing barriers.

II. Enforcement

The Long-term action plan of March is concrete and ambitious. First of all, we have to implement the different actions in the action plan without any delay. A strong mandate and proper functioning of the Single Market Enforcement Taskforce (SMET) is essential in this regard. Commission and Member States should show ownership and give an active contribution to the work in SMET. The Taskforce should take concrete steps in removing barriers and improving enforcement. Member States should address each other on issues with regard to barriers and enforcement as well in order to learn from each other (peer learning) and work on solutions. The progress in implementing the action plan should be closely monitored and reported to the COMPET Council for a regular discussion in order to ensure commitment at the political level.

With regard to the action plan many suggestions from the non-paper supported by 14 Member States from the beginning of this year were included. The Netherlands still has some additional suggestions on which it considers further action desirable.

- **Improving cooperation among authorities from different Member States:** businesses face barriers because of divergent application and interpretation of Single Market rules by authorities in different Member States. This hampers a level playing field. Furthermore, there seems to be scope for improving the cooperation among authorities responsible for application and enforcement of Single Market rules with regard to the four freedoms. The enforcement landscape is very diverse.
 - Suggestion: the Netherlands would like to ask the the Commission to conduct a mapping of the current landscape in order to identify gaps and best practices. The result of the mapping should lead to tailored solutions which help in ensuring a more uniform application and enforcement of Single Market rules. The Netherlands has done a mapping itself and its suggestions based on these results are added in the discussion paper in Annex I and II to this non-paper. This mapping could serve as a source of inspiration for a mapping by the Commission.
- **No gaps in dealing with Single Market barriers:** At present there are certain barriers which fall outside the mandate of current instruments such as SOLVIT. This concerns for example B2B transactions or divergent interpretation of Single Market rules. These barriers should be dealt with as they pose challenges for citizens and businesses.
 - Suggestion: the Single Market Obstacles Tool may help in collecting information on these category of businesses. The next step would be to ensure that the barriers themselves are addressed and if possible solved. It should be explored which network or instrument would be best. A sometimes more pragmatic approach might help, for example in SOLVIT cases where sometimes a document is lacking. Still, SOLVIT might be able to deal with the barrier concerned. A more detailed analysis of this topic is included in the discussion paper in Annex III to this non-paper.
- **SOLVIT:**
 - the Netherland supports making SOLVIT the default tool for Single Market dispute resolution. Due to the ambitions and new tasks for SOLVIT this will require strengthening resources of SOLVIT Centres in Member States. The lack of staffing in certain SOLVIT Centres is a pressing issue which was also discussed at the latest SOLVIT workshop. The Commission announced that it intends to expand its reporting on this issue which will make it easier in order to identify problems. These reports should be discussed at the appropriate (political) level, including SMET. At the same time it would be useful if Member States address these issues in bilateral contact at the appropriate level.

- Additionally, more reporting on non-accepted cases will also help in collecting information on barriers and complaints which fall outside the mandate of current instruments. It will contribute to more qualitative analysis of possible problems in the Single Market.
- Annual Single Market Enforcement Strategic Report: the Netherlands welcomes the announcement of this report which will identify specific areas of concern and priorities. The report should enable a dialogue with the Commission on enforcement. This dialogue could take place in the SMET or/and in the COMPET Council.

III. Taking lessons from the COVID-19 crisis

The Single Market has been put under severe strain during the COVID-19 crisis, aggravating our European businesses and people. Europe is still in the midst of addressing this crisis, but the Netherlands believes that it is critical to present a comprehensive evaluation of the first phase of the crisis. This should provide us with information, insights and a better understanding of *how* the Single Market was impacted and *what* we can do to ensure it is well-functioning, agile and strong during a crisis and that there remains a level playing field.

The Netherlands would like to do a few suggestions on what should be included in this evaluation. We have seen the importance of a resilient Single Market during the crisis. It is important that we learn from the evaluation how we can protect and safeguard the Single Market from internal and external shocks moving forward.

Firstly, a resilient Single Market means keeping our borders open as much as the public health situation allows, avoiding border controls and intra-EU export bans. The starting point is preserving the integrity of the Single Market, keeping our borders open as much as the public health situation allows us to do so and to avoid border controls and intra-EU export bans. The latter severely hampered free movement and disturbed our value chains. The Council recommendation on coordinated measures with regard to the free movement of persons is a positive step forward. If we want to prevent new intra-EU export bans, we believe that a Council recommendation on this issue would be desirable.

Another challenge remains the implementation of Commission guidelines with regard to the Single Market, including the guidelines on Green Lanes. A potential solution would be to make standard documents, as included in the annex of the Green Lane guidelines, legally binding during times of crisis. The use and uptake of digital documents should be encouraged as well.

Building upon this, the Netherlands would like to give the following suggestions for the evaluation:

- Analyse the developments with regard to the free movement of goods, persons and services from both an economic and a legal perspective. The analysis should focus on both procedures and measures taken by the Commission and Member States and their relation to the Single Market acquis.
- Assess the crisis-preparedness of the Single Market rules. It would be useful to map positive experiences with temporary exemptions in times of crisis, such as driving licenses and driving hours. Changing legislation in order to be able to use these exemptions in times of crisis would be desirable. At the same time we should prevent backtracking with regard to social and environmental standards.
- Explore the need and desirability of possible additional Commission guidelines or Council recommendations areas linked to free movement of goods, services and people. The guidelines could provide clear criteria for when possible restrictions are justified, but also set out best practices of proportionate measures (with regard to scope in time, substance and territory).
- Explore if further action with regard to services or specific subsectors is needed based on the strong decrease in the free movement of services during the crisis. The free movement of services is interlinked with the free movement of persons. With regard to the latter the Council recently adopted a Council recommendation on coordinated measures. It would be desirable to explore if a similar recommendation is needed.
- Asks the Commission to take into account the country-specific recommendations on the Single Market when assessing the recovery plans of Member States.

- Include lessons from the transport sector. The draft Council conclusions on a pandemic and crisis contingency plan for the European freight sector are a good example of policy options tailored to a specific sector. It could be valuable to assess if similar guidance is needed for other sectors. Some good ideas which could be explored, are:
 - Identifying what kind of infrastructure for ensuring cross-border movement (in a wider sense, i.e. not just for goods, but also for services and persons).
 - National contact points in other areas (as the option of commissioners for the free movement of goods was explored with regard to transport).
 - The establishment of a situation centre as part of the European Commission. More pooling of information via digital platforms would enable swift action during a crisis.

In the end, the Single Market should be made more resilient, i.e. ready for any future crisis. This means that free movement should only be hampered in a way which is limited and proportionate as possible. A careful balance should be struck between free movement and public interests which deserve protection.

IV. Working on a roadmap for action as common, rolling action agenda

Working on the three strands of action (barriers, enforcement, resilient Single Market) should be a common and continuous effort of Commission and Member States. The Strategic report should be an annual report which helps in taking stock and identifying (new) priorities. It should be the basis for a rolling agenda, updated on the basis of new research and analysis on challenges at the Single Market. It should contain clear milestones on who does what and when. We should try to work on different tracks and at different levels: the COMPET Council, SMET and at the level of Member States. With regard to Member State a bilateral approach could be explored, where Member States identify and try to resolve mutual barriers. In general, we should take an open, pragmatic approach with regard to ways forward where Member States show ownership and commit themselves on working on concrete solutions.