

The Consumer Voice in Europe

THE EU SINGLE MARKET AT 30

How best to ensure consumers benefit?



Contact: Agustin Reyna – consumerrights@beuc.eu

BUREAU EUROPEEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND

Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • www.beuc.eu

EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2023-024 - 06/03/2023

Why it matters to consumers

A properly functioning EU Single Market brings tangible benefits to consumers in terms of more choice and better prices for goods and services as well as the promise of high levels of product safety and consumer protection. However, the Single Market must evolve to meet consumers' growing expectations that markets make sustainable choices affordable and attractive and that a human-centric digital transformation benefits consumers. This is why the Single Market must become an instrument to not only facilitate trade within the EU but also to improve conditions for consumers and develop a fairer and more sustainable economy.

Summary

The creation of the EU's Single Market, comprising 27 countries and almost 450 million consumers, originated primarily with the need to reduce barriers to intra EU-trade and, therefore, many of the political priorities of the EU have been framed on the basis of that objective. This now needs to be reassessed and changed to ensure the EU is in a position to deliver concrete consumer benefits on the ground. In this sense, we need a Single Market guided by a vision which centres on the interests of consumers. This vision must also include the support consumers need to play their role to make the green transition a reality. In particular, the Single Market must offer consumers affordable and attractive sustainable options in all sectors and ensure that the new technologies bringing about the digital transformation increase the wellbeing of the people using them rather than causing them harm.

This paper discusses how Single Market policies should be reoriented to achieve these objectives, in particular regarding the need to:

- improve implementation in practice of EU laws;
- enhance enforcement to tackle violations of EU law in a timely and effective manner;
- address existing gaps that prevent consumers from enjoying the full benefits of the Single Market;
- pay special attention to the external dimension of the Single Market by ensuring that the EU's standards are maintained and expanded where possible and that consumer rights are fully respected and remain untouched in potential international agreements and,
- preserve the Single Market's integrity against the risk of subsidy races and disproportionate distortions of competition caused by weakening EU State aid rules in response to the subsidy policies of non-EU countries.

Introduction

The Single Market has contributed to the development of competitive and more integrated markets within the EU, bringing a wider choice of goods and services for consumers. In terms of consumer benefits, an important but often-overlooked aspect of the Single Market is the body of rules, including consumer protection, social and environmental standards, that has been adopted over the decades, contributing to improving conditions of living in the EU.

In recent times societies and consumers have had to face multiple simultaneous crises (e.g. COVID-19, cost-of-living increases, online disinformation and disengagement). The EU's Single Market has been a tool to address this constant state of crisis in a coordinated manner, guided by the principles of mutual assistance and solidarity between Member States. For example, the Single Market is an essential instrument to improve security of supply of electricity and avoid blackouts.¹

Given that the creation of a properly functioning Single Market in the EU originated primarily with the need to reduce barriers to intra EU-trade, many of the political priorities of the EU have been framed on the basis of that objective. However, these political priorities must now be reassessed and changed if the EU is to deliver further concrete consumer benefits on the ground. In other words, the rationale for EU intervention can no longer be based exclusively on reducing barriers to trade within the EU but must be expanded to include the realisation of more of the EU's founding goals and values. In this regard, the Single Market is *instrumental* to implementing Europe's consumer and social agendas, as well as contributing to achieving the Sustainable Development Goals identified by the UN.

The 30th anniversary of the Single Market is a good opportunity to reflect on its achievements and failures, but more fundamentally, on how in the future it will help to benefit consumers in the EU by making the marketplace fairer and more sustainable.

This paper therefore provides the consumer perspective on how EU decision-makers should approach the Single Market in the future so as to best facilitate the digital and green transitions.

Reclaiming consumers' central place in the Single Market

It is essential to get the Single Market narrative right in order to best guide EU action: the establishment of the Single Market is not an end in itself, but a means to enhance people's well-being in accordance with the goals and values embedded in the EU treaties.

The Single Market should not be seen as a mere instrument for economic growth (often measured on the basis of intra-EU trade between Member States) but also as a vehicle to achieve better conditions for consumers and for successful digital and green transitions. This means defining the Single Market as not only a means to give consumers more choice and better prices but also as a tool to achieve the economic and social model we want to see thriving in Europe.

¹ As an example, this past winter, France's electricity generation was drastically lower than what was needed to meet French citizens' demand, due to lower production of the French nuclear power fleet. Thanks to the Single Market, France was able to import the electricity that it needed from other EU countries, without the French Government needing to negotiate emergency deals with its neighbours. See: <https://fsr.eui.eu/the-5th-eu-electricity-market-reform-a-renewable-jackpot-for-all-europeans-package/>

It is important to bear in mind that since the creation of the EU's Single Market, it has served as the legal basis for a range of EU consumer protection standards (Article 114 of the Treaty on the Functioning of the European Union - TFEU). This means that consumer protection has always been closely linked to the Single Market, in accordance also with Articles 12 and 169 TFEU on the promotion of consumer interests. Nevertheless, the interests of businesses have all too often taken precedence over consumer interests in EU decision making on Single Market rules.

The digital and green transitions have shaped the EU's Single Market agenda in the current Commission with several proposals adopted (e.g. Digital Markets Act, Digital Services Act and Data Governance Act) or in the process of adoption (e.g. the Directive on Empowerment of consumers in the green transition, Data Act and Artificial Intelligence Act). However, it remains to be seen how these new laws will be implemented and enforced in practice to ensure that they deliver on their legislative objectives. More generally, with a growing body of complex EU legislation, the effective implementation and enforcement of this legislation will be pivotal for the proper functioning of the Single Market.

It is therefore important to develop a common vision about the future direction of the Single Market, which should be driven by the goals and values embedded in the EU Treaties. Furthermore, the EU's action concerning the Single Market should also aim to achieve the UN Sustainability Development Goals (SDGs), in compliance with the distribution of competences between the EU and its Member States.

The same approach is needed as regards the external dimension of the EU. Policies such as trade and customs must be designed to achieve such global objectives. This is not the case today. Even worse, trade policy can create obstacles to the EU's green transition as a result of concerns about trade disputes with non-EU countries. This situation is not sustainable either for the future of the Single Market or for our planet.

It is essential to preserve the integrity of the Single Market to ensure that it can deliver benefits to consumers. Thus, we must prevent disproportionate distortions of competition between Member States as a result of subsidy races caused by pressure to support EU industry to compete globally. This is why any efforts to counter the effects of non-EU countries' subsidies policies must not weaken the EU's State aid rules. Instead, such efforts must be guided by the need to preserve the Single Market and ensure that the allocation of public resources serves to achieve the overall objectives and values of the EU, and not merely to support narrow industrial policy objectives.

The following sections address these challenges.

Implementation and enforcement of EU law as a Single Market priority

Facilitating implementation of EU legislation by Member States

In the past, the European Commission often limited itself to checking conformity between EU laws and national measures implementing it. Yet, many barriers and administrative hurdles still exist today. There is a need to develop a more comprehensive approach to the implementation of EU laws. This requires the European Commission to be more vigilant as regards the way Member States implement EU laws, and support national transposition where needed. In this context, it is positive that the European Commission set up the "Single Market Enforcement Task-Force (SMET)". However, the SMET only comprises representatives from the European Commission and the Member States but no external stakeholders. In a recent report, the SMET highlighted that "although stakeholders do not

take part directly in SMET, SMET's members are eager to receive feedback and contributions. Recently SMET's work was discussed at several events (...) where various stakeholders provided very valuable contributions. SMET will build on this positive experience in its work, to develop flexible and practical arrangements, conducive to efficient interaction with stakeholders".² We therefore call on the Commission to strengthen the role of external stakeholders such as consumer groups in SMET's activities in cases where consumers have an interest in proper implementation.

Strengthening the enforcement of EU rules

A stronger focus on the enforcement of EU rules on the ground is crucial for the future of the Single Market. In many areas, the enforcement of EU legislation remains too fragmented across Europe, ultimately leaving Europeans under-protected.³ BEUC proposes several paths for improvements:

First, we see a growing need to focus on enforcement at the European level with a more centralised approach to enforcement in certain areas. This has notably been the approach followed with the Digital Markets Act and the Digital Services Act, where the European Commission now plays a pivotal role when it comes to enforcing rules against large online platforms. A more centralised enforcement approach at the EU level is also particularly important to prevent fragmented approaches and divergent interpretations of EU law when practices are likely to harm consumers in several different Member States. It responds to the need to find cost-effective solutions for addressing widespread infringements affecting millions of consumers across Europe. Such a stronger role for the European Commission should notably be considered in the context of the upcoming evaluation and revision of the Consumer Protection Cooperation (CPC) Regulation (2017/2394) concerning the organisation of cooperation between national consumer authorities to fight widespread infringements of consumer protection rules.

Second, there is a growing need to develop cross-cutting and "out-of-silo" enforcement approaches. This is because infringements of EU rules (in particular digital rules) are rarely limited to only one policy area and may have consequences for other sectors as well (such as digital, competition or others). Some EU legislation has started to consider this new approach to enforcement (for example the DMA's "High-Level Expert Group" comprises representatives from several European enforcement networks). This approach is also increasingly followed at national level by several Member States. Effective enforcement of EU rules today requires establishing appropriate communication channels and collaboration tools that allow different enforcement networks to work together.

In this context, the impact of the multitude of different enforcement architectures that have been, or are being, established in the field of the Digital Single Market in particular at national and EU level, should be monitored closely. It might be difficult for consumers to know which is the competent authority in case they have a problem and need to complain. Consumer authorities under the CPC network or another national contact point should be obliged to accept complaints and refer them to the relevant authority. Here inspiration could be drawn from the EU Single Digital Gateway,⁴ which by the end of 2023, will give citizens access to several online procedures and also provide for the transfer of relevant documents and information between various authorities across Europe. A similar single enforcement contact point could be established specifically for consumers.

² Single Market Enforcement Taskforce report, 2021/2022, available at <https://ec.europa.eu/docsroom/documents/52234/attachments/1/translations/en/renditions/native>

³ BEUC, Strengthening the coordinated enforcement of consumer protection rules, available at www.beuc.eu/position-papers/strengthening-coordinated-enforcement-consumer-protection-rules

⁴ European Commission, The single digital gateway and Your Europe, available at, https://single-market-economy.ec.europa.eu/single-market/single-digital-gateway_en

Moreover, the existence (or not) and design of procedures for **EU wide- and cross-border infringements** vary significantly between several areas of law of importance to consumers, while in substance, they may be closely linked. For example, in the case of a connected product, the GDPR applies on the one hand and consumer law or the new Artificial Intelligence Act on the other hand.

We therefore call on the Commission to launch a debate on the pros and cons of the various enforcement architectures used in EU law and to put in place mechanisms to ensure that, in all relevant areas of law, an effective mechanism exists to stop cross-border and EU wide infringements. To do this we suggest that the next European Commission includes a specific horizontal entity to provide input into the Commission's preparation of legislative acts in order to ensure coherent and effective European enforcement structures.

Third, as the European Commission rightly pointed it out in its October 2022 Communication on enforcing EU law⁵, **enforcement must no longer be seen as a solitary endeavour but as a collaborative activity**. As the Commission put it, "enforcement is about cooperating and working hand-in-hand with Member States in the first instance, as well as with specialised authorities like consumer or data protection authorities, competition and regulatory authorities, NGOs, businesses and the public". In this context, BEUC and the CPC Network have taken steps recently to strengthen their collaboration as regards the external alerts that stakeholders may bring to the attention of the CPC Network when they detect infringements of consumer rules.⁶ This collaboration between authorities and consumer organisations is very much welcomed and can contribute to better enforcement of EU rules on the ground.

Fourth, authorities should have the necessary resources to perform their supervisory tasks. The financial, material, technical and human capacity of national consumer authorities still diverge significantly across Europe. Many Member States still do not finance their authorities sufficiently. Moreover, although some authorities have developed technological tools to strengthen their market surveillance tasks, such online tools are not available in all Member States or for all authorities. The European Commission should carefully monitor the national budgets allocated to authorities and assess whether they match their supervisory roles (similar to the approach taken towards national competition authorities by the so-called ECN+ Directive (2019/1). In parallel, a discussion should be launched on ways to better finance the public enforcement of EU rules. The European Commission itself should also have sufficient resources and capacity to be able to play a more prominent enforcement role. In that context, the Digital Services Act (EU Regulation 2022/2065) for instance provides that the Commission will charge providers of very large online platforms and of very large online search engines an annual "supervisory fee" to ensure the Commission has the necessary resources to perform adequate supervision at EU level.

Finally, it is important to build synergies between public and private enforcement. In particular, the correct implementation of the new Representative Actions Directive brings new opportunities across all Member States to ensure consumers are compensated in case of breaches of EU consumer protection laws.

⁵ COM(2022) 518 final, 13 October 2022.

⁶European Commission, Cooperation with consumer organisations, available at https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/cooperation-consumer-organisations_en

Further market integration in areas that matter to consumers

In addition to enforcement, there are areas of the Single Market that need to be further developed to ensure consumers can already benefit from cross-border activities, or where action is needed to ensure that consumers can benefit from such activities in the future. Below we have identified some areas where improvements are needed.

Boosting intra-EU rail

To ensure that consumers can play their part in the green transition, it is crucial that more sustainable mobility options are available to them. In this regard, there is an urgent need to improve intra-EU rail transport not only by developing the rail network but also by making it more convenient to use, especially when crossing borders. This is essential not only to ensure Europe is well-connected but also that citizens can enjoy their freedom of movement within the EU in a more sustainable way. Therefore, we ask the European Commission to swiftly present a legislative initiative⁷ to facilitate consumers' experience in finding and booking rail tickets. It should indeed be as easy to find cross-border train tickets as it is to book intra-EU flights. This means railway operators must share their data (timetables, fares, ancillary services) with independent ticket vendors to allow for the easy comparison of all transport modes and the combination of tickets from several operators. The exchange of data between transport operators and intermediaries (under fair, reasonable and non-discriminatory conditions) is a prerequisite for a better-functioning rail market. At the moment, market restrictions still hinder consumer choice and private initiatives have not delivered the promised results. An EU-wide regulation should also set up liability mechanisms so that consumers can exercise their rights and obtain assistance in case of disruption of their multimodal, cross-border journeys.

Increasing cross-border protection in multi-modal transport

When travelling cross-border, consumers increasingly want to combine different modes of transport and use environmentally friendly alternatives (e.g. Air-Rail or Rail-Coach). This is why there are an increasing number of multimodal travel offers on the market. However, consumers do not want to compromise on their levels of protection. Currently, when combining different modes of transport, consumers are not covered by binding passenger rights, but are left to the mercy of the carriers' terms and conditions, leaving them largely unprotected. To encourage a shift to cross-border multimodal transport, it is essential that consumers benefit from strong and easily enforceable multimodal passenger rights (including right to re-routing, assistance and care, and compensation)⁸. Travellers should no longer be less protected because they have opted to use multimodal travel.

Tackling geo-blocking of audio-visual services

Consumers still face digital barriers when trying to access online audio-visual content across borders in the EU, despite the efforts made to create a Digital Single Market. Building on the existing rules on geo-blocking in e-commerce, online broadcasting and content portability, the EU must finally put an end to geo-blocking in audio-visual services once and for all. Geo-blocking is a discriminatory practice that has no place in the Single

⁷ The Commission announced the publication of a "Multimodal Digital Mobility Services" for 2023. Its adoption by the European Parliament and the Council during this political mandate requires that the proposal is presented as soon as possible.

⁸ BEUC, Passenger rights 2.0 - Accompanying paper to BEUC's response to the European Commission's public consultation on the Better Protection of Passengers and their Rights Initiative, available at https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-125_Better_Protection_of_Passengers_and_their_Rights.pdf

Market based on the fundamental principles of free movement of goods and services. For instance, the European Commission and the CPC Network recently highlighted persistent problems with Google not complying with geo-blocking obligations and stressed that "Google applies technical limitations for the use of the apps which would normally be available in the country where the user is temporarily located".⁹ Consumers interested in accessing movies or series in another EU country should be able to do so. This would facilitate access to culture and incentivise competition, and would allow consumers to enjoy more of the benefits that the Digital Single Market can offer.

Improving electricity interconnections between Member States

To achieve the energy transition, the share of wind and solar power in the electricity generation mix will need to drastically increase, in place of fossil fuels. From the consumer perspective, it is important that this happens in a way that ensures that consumers always have electricity when they need it, and that leads to the least cost for consumers. These goals can be achieved by rolling out a mix of solar and wind power generation assets in different areas across Europe. It is important that these power generation assets are located as much as possible in areas with high potential for wind and solar power generation so as to lower the unit cost of producing renewable-sourced electricity (given that wind and solar power production have high upfront costs and very low running costs). Although each generation unit will not be able to produce electricity all the time, it is likely that across Europe there are always areas where either the wind is blowing or the sun is shining.

However, a renewables-based power system needs appropriate transmission infrastructure, including cross-border infrastructure, to reliably deliver electricity to European consumers. For example, while Mediterranean countries have high potential for solar power production, they have lower potential for wind power production than countries close to the North Sea. Hence, cross-border exchanges will be increasingly important and cross-border infrastructure should be built to facilitate such exchanges.

EU rules should ensure that electricity networks are planned in a cost-effective manner, leading to lower costs for consumers, and that, where relevant, appropriate financing is granted for cross-border projects.

Cheaper intra-EU communications

'Roam Like at Home' has been an EU-wide success story for consumers and businesses alike. However, while roaming fees may largely be a thing of the past, consumers still face prohibitive prices when calling someone abroad inside the EU. Despite the introduction of certain caps, the high cost of intra-EU communications continues to represent a barrier to the functioning of the Single Market and is fundamentally unfair to consumers. Ending price differentiation and surcharges for intra-EU calls is an important missing element for the achievement of a true Single Market for digital and telecommunication services.

Tackling anti-competitive practices fragmenting the Single Market

A properly functioning Single Market requires that the European Commission, as the EU's competition law enforcer, remains vigilant about practices liable to fragment the Single Market. In times of inflation and economic uncertainty, intra-EU competition is important to ensure that products, in particular food, remain affordable especially for the most vulnerable households. Therefore, we ask the European Commission to continue to enforce

⁹ https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines_en#google

EU competition law against practices by economic operators that hinder or prevent trade between Member States (territorial supply constraints) and to consider whether legislation is a more appropriate tool to tackle these practices which the Commission has found unjustifiably push up consumer prices¹⁰.

The external dimension of the Single Market

The EU's Single Market is the largest common market in the world. It is governed by common rules and a common Customs Union. This makes it easier for traders from countries outside the EU to access our market and is why the EU is the top trading partner for 80 countries worldwide.

The protection of consumers in global markets

Products entering the Single Market from the rest of the world are supposed to be safe and to comply with EU legislation. Consumer organisations' research has shown that this is a myth, with consumers at risk from dangerous products directly imported into their homes. This trend is confirmed by reports from the EU Safety Gate¹¹. Consumers cannot be protected if EU laws are not respected by traders from outside the EU. This requires, *inter alia*, the Consumer Protection Cooperation (CPC) Network to make more use of its powers against traders from non-EU countries that violate EU laws. Recently, the French CPC Authority for instance ordered the de-listing of products sold by the US marketplace Wish.com from several search engines after research showed that the platform distributed many unsafe products.

To better protect consumers from the challenges of globalisation, we will also need EU authorities to better work together. They should also be able to cooperate with their counterparts abroad. Moreover, the EU should use the opportunity of the reform of its Customs Union to empower customs authorities to better protect consumers.

The need for coherence between internal and external policies

The EU's market power can sometimes inspire other countries to adopt similar rules to the EU's. But it can also lead to tensions. Indeed, when the EU wants to adopt higher levels of consumer, social or environmental protection, some of our trading partners consider that it will limit their ability to access our market. In some cases, they can even threaten to retaliate by limiting the EU's access to their own markets, if they consider that an EU rule would infringe global trade rules. This type of criticism has been seen during the drafting of laws such as the Digital Services Act, the Carbon Border Adjustment Mechanism and the ban on antimicrobials in imported meat. The EU is susceptible to such pressure from trading partners because it is the biggest exporter in the world, and its economy relies on access to other countries' markets. The question is: how can the EU achieve the United Nations Sustainable Development Goals (UN SDGs) and ensure coherence between its internal and external policies, when trade rules create such barriers?

¹⁰ European Commission, Study on territorial supply constraints in the EU retail sector, available at <https://op.europa.eu/en/publication-detail/-/publication/831c7de4-2a1e-11eb-9d7e-01aa75ed71a1/language-en>

¹¹ According to the 2021 annual report of the safety gate, 48% of the alerts on dangerous products were concerning products from China (and 16% products from other countries), available at https://ec.europa.eu/safety/consumers/consumers_safety_gate/statisticsAndAnnualReports/2021/RAPEX_2021_report_EN.pdf

The EU must better explain to its trading partners how consumer, social and environmental protection facilitates trade flows and enhances consumer trust. More fundamentally, the 'trade' narrative must change: trade rules must comply with the UN SDGs, and not the other way around. This implies that EU trade policy and global trade rules must be reassessed.

Subsidies must meet strict conditions

The ongoing debate around the need to support the EU's industry to face the pressure caused by the subsidies policies of non-EU countries, notably by the US, requires paying careful attention to the impact of the policy options under consideration on consumers and the integrity of the Single Market. State aid has been the primary tool to support various sectors at national level, as we have seen in the context of the COVID Temporary Framework. However, national subsidies when unjustified can endanger the integrity of the Single Market by distorting competition in favour of companies located in those Member States that pay out the most subsidies and thereby risking that companies not receiving subsidies go out of business. Subsidies can also lead to the re-allocation of significant national resources without appropriate conditions being attached, especially if Member States get locked into a subsidy race in an attempt to outbid each other. A similar threat exists in the farming sector where there are calls to provide more public funds to European farmers without conditions (such as making the food supply chain more sustainable).

This is why BEUC supports a European solution in which the EU creates a fund, similar to the Next Generation EU recovery instrument, that could be used to support projects that correspond with the objectives of the green transition. This could be done by requiring the resources invested to be used to defend European industries' competitiveness while at the same time contributing to the objectives of the Green Deal and improving consumers'/citizens' welfare. On top of this conditionality mechanism, there should also be stronger public scrutiny of how these common resources are used in practice.

Institutional set-up for the Single Market

In order to better address all aspects highlighted above and to deliver the full benefits of the Single Market for the next 30 years we suggest that the next European Commission is structured to include not only Commissioners responsible specifically for the Single Market and for consumers, but also the creation of a special service dedicated to effective and coherent enforcement of EU law (see above).

