

ERRT Position on the EU Single Market

ERRT welcomes the EU Commission's ambition to upgrade the Single Market, including its digital dimension, as presented in the new Communication COM (2015) 550 and in the Digital Single Market Strategy COM (2015) 192. We need indeed, a policy strategy that aims to enable shoppers to benefit from the Single Market, both in stores and on the internet.

However, and as the EU Commission is aware, a true European Single Market for goods and services is currently still lacking. ERRT members continue to face important obstacles that hamper competition, limit their ability to deliver the benefits of the Single Market to shoppers and hinder it from achieving its full potential.

Therefore, any action aimed at removing operational restrictions in retail, be it offline or online, ensuring a proper balance between business opportunities and consumer protection, deserves to be supported.

We hope the EU Commission will consider the following contribution as a key component to the debate.

ERRT members are important drivers and supporters of the EU Single Market.

Retail generates 13% of the EU GDP and accounts directly for 4% of GDP. Large retailers are good for 45% of the value added in the sector. They employ 6,8 million of the 18.5 million people working in the sector (37% of the retail workforce). The ERRT Member companies employ around 2 million European citizens (11% of the retail workforce), operate nearly 50.000 stores and serve 335 million customers each week.

Competition drives down costs for goods and services and facilitates innovation and modernisation.

In unison with digital progress, ERRT members, traditionally engaged in brick and mortar retailing, have developed multichannel strategies combining the advantages of purchasing in store with the advantages of online shopping. Due to the highly competitive environment they operate in, they are continuously looking for new challenges to provide consumers with the best quality, service and price so as to attract them into their physical or virtual stores.

The EU has the potential to become a global leader in online retail. This requires a regulatory framework that enables retailers to pursue seamless cross-border multichannel strategies, blending online and offline elements in a multitude of combinations. EU policy needs to be systematically tested for its neutrality on digital and physical cross-border retail and adapted where necessary.

We believe that a **"digital fitness test"**, in addition to the existing impact assessment, should be introduced for every proposed piece of EU legislation so as to ensure it is fit for the digital age, stimulates cross-border trade and does not unjustifiably differentiate between the various sales channels. The same test could also be applied for the assessment of existing regulation (REFIT¹).

In addition, prior to any new initiative, a thorough impact assessment should be carried out, proving that the action is necessary to solve a specific problem, that it meets the aimed

¹ https://ec.europa.eu/economy_finance/REFIT_en

objective, and that the principle of subsidiarity is taken into account to avoid unnecessary interference into existing systems or commercial practices that prove to be functioning.

Many obstacles retailers face in the EU are due to misinterpretation, incorrect implementation or ill application of EU rules, and not necessarily due to lack of legislation at EU level. **Therefore, a strong enforcement of existing EU legislation is of foremost importance to have consumers and businesses to benefit of the advantages put in place for them.** Involving stakeholders pro-actively in this regard, be it via online consultations or expert fora, and encouraging market authorities to cooperate more closely are certainly moves in the right direction. Moreover, it is important to involve national enforcement authorities in the process of reviewing and transposing EU legislation, to ensure common level of enforcement by national authorities and better cross-border cooperation to tackle intra-Community infringements.

The freedom of establishment in the EU Single Market is still hampered due to protectionist measures by Member States.

We remain confident in the EU Commission's awareness of the need to tackle national discriminatory measures related to retail establishment and to reduce operational restrictions in the Single Market. We would appreciate the opportunity to remain involved in the envisaged work on guidance for Member State reforms and priority-setting for enforcement policy in the retail sector. ERRT members perceive the persistent restrictions on establishment and market access as strong inhibitors of competition resulting in limited access for consumers to goods and services of their choice.

By way of example, despite being outlawed under the "Services Directive"², which obliges Member States to abolish requirements such as economic needs tests for the issuing of retail permits, such requisites still exist and are applied in a number of markets in the EU. Although fully respecting the public interest and the need to support cities in remaining vital, we consider such practices as designed to restrict competition and therefore encourage the EU Commission in its efforts to eliminate prohibited requirements for the granting of commercial permits.

In a EU Single Market there is no room for protectionist behaviour preventing competition and wider choice for consumers. Certain Member States adopt measures that add additional costs or burden for retailers to establish on their territories or make it more difficult for them to stay operational in that particular Member State. Many examples have been provided to the EU Commission, such as the Food Inspection Fees (Hungary), placing restrictions on selling prices (Romania) and inappropriate and lengthy authorisation procedures for opening new stores (Italy). These measures often constitute indirect discrimination and put foreign companies at a disadvantaged position in terms of posing additional requirements and taxes. These measures are designed in such a way (applying only to imported products or to companies having a certain turnover), that they only have an impact on foreign companies and not affect national companies of a particular Member State.

A solid system that would monitor and flag new legislative proposals (national and local) with an impact on retail establishment, will help the EU Commission and the Member States to ensure compliance with the European rules, a level playing field and enhance competition for the benefit of European citizens.

In this context, **we encourage any EU Commission action in support of strengthening the effectiveness of the notification procedure under the Services Directive³** that requires

² 2006/123/EC

³ COM(2013) 912 final



Member States to notify the EU Commission of any new laws, regulations or administrative provisions that might constitute (direct or indirect) discrimination, including the reasons for the adopted requirements. The compatibility assessment of any new requirements should be made public and transparent. Additionally, to prevent a business from facing unnecessary high costs during the assessment, there should be a standstill period during the assessment.

Barriers to the free movement of goods need to be addressed.

ERRT would welcome continued EU Commission action tackling all discriminatory behaviour by national authorities hampering the free movement of goods and services within the Single Market. Restricting the sales of products that are lawfully produced in one Member State by other Member States, is a breach of the 'free movement of goods' provisions established in the Treaty on the Functioning of the European Union (TFEU) and the mutual recognition principle. **For the realisation of the Single Market, strong enforcement of the mutual recognition principle, in the field of non-harmonised goods, is essential.**

Additionally, there is a strong need for closer cooperation among market surveillance authorities, to ensure that EU rules are implemented and applied in the same manner at national as well as regional level.

Different mandatory labelling and consumer information requirements are a barrier to the Single Market.

The Retail Action Plan of 2013⁴ already acknowledged that divergent information requirements, maladapted labelling rules coupled with additional national provisions hamper retailers' ability to move goods across borders, both when sourcing products from, and selling products to, another Member State. Although this problem is identified again as a barrier in the EU Commission's Digital Single Market Strategy, ERRT regrets the omission of concrete actions which would allow our members to provide their customers with more offers at more attractive prices.

To overcome the barriers imposed by divergent national labelling rules, ERRT members propose innovative technical solutions regarding product labelling by enabling retailers to provide required consumer information in lieu of traditional labels, such as the provision of consumer information electronically, as it is already possible for food products sold online.⁵

In parallel, the EU Commission should continue its work on **developing a harmonised set of mandatory labelling rules applicable across the EU**. In the interest of avoiding counterproductive information overload, these harmonised rules should seek to keep mandatory consumer information to a strict minimum and all other national labelling requirements (including language requirements) should be optional. Moreover, we would suggest **an overall product requirement regulation (per type of product)** rather than a number of legislation regulating partially the same matter.

Compliance with 28 different national consumer sales regimes comes at a cost incompatible with the spirit of a Single Market.

Full harmonisation of consumer rights within the EU would considerably facilitate ERRT members' sales across borders and reduce compliance costs. Despite several attempts in this field which faced resistance by Member States ("CRD⁶" and "CESL⁷"), the EU Commission should not abandon its harmonisation efforts in this field. The new proposal on contract

⁴ Setting up a Retail Action Plan, 31.1.2013 COM(2013) 36 final

⁵ Regulation on Food Information to Consumers (EU) 1169/2011

⁶ Consumer Rights Directive 2011/83/EU

⁷ Regulation on Common European Sales Law (CESL) (EU) 2011/2317

rules for online and other distance sales of goods⁸, could be a step in the right direction, but fails to take into account a proper balance between business opportunities and consumer protection, and the need for a holistic approach, which would be essential to provide predictability and legal certainty to businesses.

In its attempt to remove rogue traders from the market place, the EU Commission should be careful not to punish good and compliant businesses by placing unnecessary excessive burdens and high costs on them, which will be ultimately passed on to consumers.

“Geo-blocking” is often not a choice but a consequence of Internal Market barriers.

ERRT members are worried about the present demonisation of different treatment of consumers based on their countries of residence from which they place online orders.

Considering the very sharp competition on the retail markets, it is hard to imagine a retailer refusing to sell without there being a risk of potentially higher costs outbalancing the benefits. The cases of unjustified different treatment of customers on the basis of residence or nationality may therefore be the exception rather than the rule. Nevertheless, there is a need for clarity on what is unjustified and not grounded on objective and verifiable factors.

There are no details provided on the legislative and enforcement actions the EU Commission will take to fight “geo-blocking”, but we can already say that **ERRT will reject any measure aimed at forcing businesses to sell online cross-border**. The contractual freedom must be respected, and retailers must remain free to determine the geographic scope where they wish to operate.

The EU Commission’s Staff Working Document of 2012 establishing guidance for the application of Article 20 of the “Services Directive” already recognises that businesses are free to determine the scope of the geographic area in which they provide their services.⁹ Further, it states that a case-by-case analysis is required in all circumstances to determine whether different treatment is being applied to recipients and whether or not that treatment is justified for objective reasons.

There are many reasons why businesses apply different prices or/and conditions for their cross-border transactions, why they reroute consumers or why they do not sell to certain markets in the EU. As the topic is not new and the EU Commission has already been collecting feedback on cross-border sales barriers for several years, we should limit ourselves to the principal reasons:

- **Diverging national legislation:** Retailers have to adapt their contracts to a diversity of legal and fiscal regimes which adds significantly to the cost of market entry and a series of challenges linked to it such as cost of building brand awareness; small scale of some markets; unproven demand. For example, general terms and conditions cannot be transferred directly from the retailer’s country of establishment to other countries. Different consumer rights, labelling requirements, rules on product standards and composition, health and safety regulations, electronic waste disposal provisions, rules on price promotions (e.g. sales below costs prohibitions) generate costs for legal advice.
- **Different national costs and rates:** Marketing, sales and customer relationship and interaction processes need to be adapted per country, as is the case for customer preferences, language and/or currency. Retailers have to adapt their IT systems to reflect each individual country’s peculiarities and build call-centre, delivery and return capabilities to match.

⁸ COM (2015) 635 final 2015/0288 (COD)

⁹ COM (2012) 111 final

