



European
Commission

High Level Group on

RETAIL COMPETITIVENESS



*Internal Market,
Industry,
Entrepreneurship
and SMEs*

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Report of the High Level Group on

RETAIL COMPETITIVENESS

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MEMBERS OF THE HIGH LEVEL GROUP ON RETAIL COMPETITIVENESS

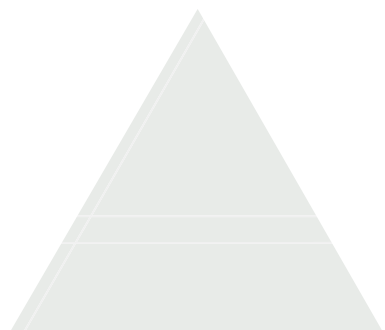
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3. Bivolino represented by **Carine Moitier**, co-founder and Chief Operational Officer.
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16. Lego represented by **Carsten Rasmussen**, Senior Vice President responsible for Shopper Marketing and Channel Development and member of Lego's Corporate Management.
17. UNI Europa represented by **Laila Castaldo**, policy officer.
18. «Which?» represented by **Helen Parker**, Deputy Chief Executive.
19. **Professor Dr. Dieter Ahlert**, Chair of Distribution and Retailing, University of Münster.

**EuroCommerce participated as expert in the discussions
on working environment issues.**

¹ Indesit Company S.p.A. was acquired by Whirlpool Corporation.

TABLE OF CONTENTS

1. INTRODUCTION	8
THE GROUP	8
CHALLENGES OF THE RETAIL SECTOR	9
2. KEY THEMES	10
2.1 BARRIERS TO A SINGLE MARKET FOR RETAIL SERVICES	10
2.2 E-COMMERCE	12
2.3. SMES	14
2.4. INNOVATION	16
2.5. WORKING ENVIRONMENT ISSUES	17
3. CONCLUSIONS	19



1. INTRODUCTION

The Group

In the European Retail Action Plan (ERAP), the Commission announced the setting up of a Group on Retail Competitiveness. The creation of this group should help trigger a 'retail reflex' in the political agenda and increase awareness of retail issues and concerns. The High Level Group on Retail Competitiveness («The Group») was established by the Commission in December 2013.¹

The objective of the Group was to assist the Commission in developing policies to improve the long-term competitiveness of the EU retail sector. Its work is relevant for the Commission's ongoing reflections on how to tackle the remaining barriers to a Retail Single Market and to ensure that the sector delivers its full potential.

The Group consisted of 20 Members representing different stakeholders in the retail chain (multinational retailers, SME retailers, independent retailers, discounters, cooperatives, an online trading platform, suppliers, a consumer organisation, a European trade union organisation and an academic): Carrefour, Metro, Ikea, Lidl, Sonae, Euronics, Kesko, ANWR, Musgrave, HEMA, Allegro, Henkel, Bivolino, GlaxoSmithKline, Eckes-Granini², Indesit³, Lego, Which?, UNI Europa and Professor Dr. Dieter Ahlert.⁴

The Group organised its first meeting on 20 January 2014, which was opened by Commissioner Michel Barnier. Four further meetings were organised including the final meeting on 8 July 2015.⁵

To ensure coordination with the ongoing work on retail services in the European Parliament (EP), Members of the European Parliament (MEPs) participated in meetings of the Group: MEP Malcolm Harbour (at the time Chair of the Internal Market and Consumer Protection Committee), MEP Dennis de Jong (rapporteur on the EP own initiative report on the ERAP) and MEP Anna-Maria Corazza Bildt (Vice-Chair of the Internal Market and Consumer Protection Committee).

¹ For more information, also see the Register of Commission Expert Groups: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2970&NewSearch=1&NewSearch=1&Lang=EN>

² Eckes-Granini withdrew its Membership on 1 December 2014.

³ Indesit Company S.p.A. was acquired by Whirlpool Corporation.

⁴ Further documentation on the High Level Group, including meeting agendas and summary reports of the meetings can be found in Register of Commission Expert Groups, accessible via the following link: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2970&NewSearch=1&NewSearch=1&Lang=EN>

⁵ The other 3 meetings took place on 25 June 2014, 2 December 2014 and 18 March 2015.

Challenges of the retail sector

The retail and wholesale sector is an **essential sector for the European economy**. Retail and wholesale employ nearly 29 million people⁶ and account for 9.6% of total EU value added⁷. It also represents a large part of the SME sector; almost 1 out of 4 European SMEs are active in retail and wholesale⁸. At the same time European retailers have been leading players internationally, with 5 out of top 10 global retailers stemming from the EU. The wholesale and retail sector is particularly important for youth employment with 13.7%⁹ of employees in the 15-24 age range. In the retail sector alone this age range represents more than 16% of employment¹⁰. With a total of 3.5 million young employees, retail and wholesale employ almost 1 out of 5 young active persons in the EU.¹¹

Retail therefore has an essential role to play in stimulating growth and job creation in the Internal Market. The efficiency of this sector has implications for innovation, price trends and competitiveness.

The retail sector is currently facing far-reaching changes linked to the development of e-commerce. Removing barriers to the digital single market and helping retailers to grasp all the opportunities that e-commerce offers will stimulate growth and contribute to job creation.

Helping SME retailers to grow and modernize as well as stimulate innovation and development of adequate skills in the sector are essential questions in this context.

Against this background, the following issues were identified as key themes for work during the Group's first meeting: barriers to a Single Market for retail services, e-commerce, SMEs, innovation and working environment issues. To facilitate work, four preparatory working groups were organised by theme, with the exception of «barriers to a Single Market for retail services», for which members circulated their views in writing for discussion in the plenary meetings.

The challenges and opportunities that the internationalisation of the sector is creating for European retailers were also discussed. The Group considers that it is of key importance that e-commerce aspects are taken into account by the Commission in all trade negotiations. As European companies often have to comply with more stringent requirements than their foreign competitors (e.g. in the field of data protection and labour legislation), it is important to create a level playing field for all market participants. A fair treatment for all market players willing to enter new markets should be promoted in all international negotiations. A second aspect of great importance to the retail sector in free trade negotiations are food and product safety issues. The Commission should ensure that the European high standards in this field are promoted in all trade negotiations.

The Group also underlines that all measures that policy makers could take to help its development will have a direct impact on the quality of life of European consumers which should benefit, wherever they live, from access to the widest choice of high quality products at competitive and affordable prices. In this respect it was highlighted that the retail sector seems to benefit from higher levels

⁶Eurostat sbs_na_r2, 2012 - excluding repair of motor vehicles.

⁷Ibid.

⁸Eurostat sbs_sc_dt_r2, 2011 - excluding repair of motor vehicles.

⁹Eurostat, lfsa_egan22d, 2012 - excluding repair of motor vehicles.

¹⁰Ibid.

¹¹Ibid.

of consumer trust and satisfaction than other sectors¹². Regarding consumers' expectations when purchasing online, the Group considers that providing innovative and convenient delivery solutions is one of the priority issues.¹³

This report provides an overview of the main aspects discussed by the Group and highlights its key recommendations¹⁴. More details about the work of the four preparatory working groups can be found on the website of the European Commission¹⁵.

2. KEY THEMES

2.1 BARRIERS TO A SINGLE MARKET FOR RETAIL SERVICES

Problems identified

The Group's day-to-day business experience when trying to develop retail activities cross-border, shows that remaining barriers affect the completion of a Single Market for retail. Retailers face persisting barriers to market entry created by certain retail establishment conditions. There are also an increasing number of different types of operational restrictions. In this respect concerns were expressed about developments in certain Member States where a previously non-restrictive regulatory environment has deteriorated in recent years.

In this context, the Group particularly stresses that, in any reflection about the competitiveness of the retail sector, the remaining existing barriers to the free movement of goods should also be taken into consideration. Taking action to reduce regulatory barriers or operational restrictions affecting the establishment of shops in Member States needs to be accompanied by measures tackling the diversity of national labelling rules and other product requirements. The Group underlines that the requirements to be met by imported products as regards shape, size, weight composition, presentation, identification or display¹⁶ require in practice that producers and retailers looking to sell these products cross-border adapt the products in question to the rules in force in the Member State in which they will be marketed. This translates into re-labelling and re-packaging of products. Moreover, the Group underlines that these barriers affect both online and offline retail. A wide-reaching approach to these barriers is therefore necessary. Harmonisation would be the ideal solution to reduce regulatory fragmentation currently hindering the development of cross-border retail. However, should it not be possible to achieve this in a reasonable timeframe, alternatives should be considered such as fully applying the trader's law to cross-border sales.

¹² Presentation by Mrs Helen Parker, UK consumer organisation «Which?».

¹³ Ibid. Examples of such delivery solutions include pick-up points, drive (France), click and collect (UK)

¹⁴ Sustainability is also a key issue for retailers. It was however not discussed in the Group as it is already discussed in the Retail Forum: http://ec.europa.eu/environment/industry/retail/index_en.htm

¹⁵ http://ec.europa.eu/growth/single-market/services/retail/index_en.htm.

¹⁶ See the findings in the Commission's Guide to the application of Treaty provisions governing the free movement of goods of 2010:

http://ec.europa.eu/enterprise/policies/single-market-goods/files/goods/docs/art34-36/new_guide_en.pdf.

During discussions, the following issues were highlighted as particularly crucial:

1. **Establishment of retail outlets:** selecting the right location for retail development and the timely start of operations are decisive for business success. This depends on the availability of suitable real estate, but also on the existence of retail establishment rules that do not inappropriately hamper competition.
2. **National labelling rules and other product requirements:** burdensome and fragmented national product labelling rules, as well as other requirements to be met by products imported from other Member States where they are lawfully produced or marketed, continue to create obstacles to cross-border retail.
3. **Operational restrictions and barriers to cross-border trade:** retailers also face operational restrictions which moreover differ between national markets such as regulations on sales below cost, promotions and discounts, or from the application of retail-specific taxes and fees. In the internal market, businesses should be able to trade cross border in a similar manner as they trade in their home country.
4. **Measures favouring national procurement:** requirements imposed on retailers in certain Member States make foreign procurement more burdensome or try to encourage procurement from national providers. These measures affect the movement of goods in the internal market and ultimately restrict retailers' ability to provide services across the EU.

The Group also discussed the issue of Territorial Supply Constraints (TSCs). While a number of factors could explain consumer price differences, such as divergent national labelling rules, different tax policies, different cost structures and different competitive situations to which retailers adjust their market behaviour, TSCs could in some Member States be an additional factor contributing to these differences, to the detriment of consumers.

Proposed actions:

To provide concrete answers to these problems, three actions should be given priority:

1. **Ensuring effective implementation** by Member States (often at local or regional level) of best practices on retail establishment based on the peer review launched by the Commission after the adoption of the European Retail Action Plan, with a view to facilitating market entry for new players. Any implementing measures should be accompanied by strict enforcement actions.



2. **Taking action to reduce the regulatory burden imposed on retailers** in Member States, particularly through restrictions that limit their freedom to provide services across EU.
3. **Strengthen the internal market when it comes to labelling and product requirements.** It suggested setting up an EU-wide non-food product labelling register so as to reduce information costs for retailers trying to sell cross-border, particularly SME retailers.

2.2 E-COMMERCE

Problems identified

Legal fragmentation in many areas in the European Union is hindering the development of e-commerce in the EU. In 2014, only 15% of businesses sold their products online cross-border.¹⁷ If all EU countries had the same rules for e-commerce, 57% of companies would be willing to start trading or increase their sales to other EU countries. Because the cost of legal fragmentation is considerable, many businesses refrain today from selling cross-border, which is ultimately detrimental to consumers who want to buy products online from other Member States but cannot do it in practice.

The lack of consumer and businesses confidence in relation to digital activities is an important issue affecting the development of e-commerce in the EU. Consumers need to be reassured that they will also continue to enjoy a high level of protection of their rights when buying online and that their personal data will not be misused. Help should also be offered to businesses to enable them to develop their offer online. The objective should be that businesses in the internal market may trade cross-border in a similar manner as they trade in their home country. Building of trust also includes transparent, accurate and unbiased review and comparison sites.

¹⁷ Commission Staff Working Document «A Digital Single Market Strategy for Europe –Analysis and Evidence»: http://ec.europa.eu/priorities/digital-single-market/docs/dsm-swd_en.pdf.

The creation of a **sound regulatory framework and a sufficient level playing field** for all operators in the internal market, both online and offline, would contribute to the emergence of strong European e-commerce market players, which are currently lacking in Europe. Many issues would need to be addressed to create the right framework conditions for e-commerce. For example, the lack of tax harmonisation, different national labelling rules, considerable administrative costs and often too expensive and/or inadequate delivery services restrict retailers' ability to sell cross-border. Logistics and delivery are one of the main concerns of both e-shoppers and e-retailers in the EU. The discussions in the Postal Users Forum in 2012 highlighted the importance for e-retailers of a quality delivery service i.e. time definite delivery, a well-functioning transparent transport network, availability of track-and-trace systems, etc. These characteristics are still relevant today.

Easy and convenient online payment is also essential to the development of cross-border online sales. With the existing systems, retailers need to send the product before payment is received and the identity of the buyer cannot be verified. Payments should become electronically verifiable and more secure.

With respect to **data protection aspects**, the Group underlined the **need for a comprehensive dialogue with economic operators while action should be taken to guarantee consumers' fundamental right to the protection of their personal data**. It is important that any misuse of personal data is strictly prohibited. But at the same time, businesses should be allowed to use – in a transparent manner towards consumers, the data necessary for the efficient provision of services and supply of products or which could help improve them. Clarification on the law applicable to B2B data would also be welcomed.

Platforms have also a central role in the development of e-commerce, to the benefit of both consumers (who can get access to a larger offer of products and services) and retailers (who can extend their market presence). In practice it appears that some platforms function as «gatekeepers» and as such can, for example, restrict other players' access to the market, in particular small retailers. It is therefore important to **ensure that the behaviour of platforms with significant market power does not hinder the development of platforms as a business model**. This issue is however very complex, as the notion of platforms is used today to refer to a large variety of different business models and situations. The Commission's e-commerce sector inquiry will help to clarify the situation in the market.

The Group draws also the attention of policy makers to the importance of **broadband investments** in remote areas for the development of e-commerce in such areas.

Care should be taken that any regulatory action considered at EU level does not hinder innovation and the ability of European retailers, many of which are (or in the process of becoming) multi-channel operators, **to develop and to fairly compete** at EU and also global level.

Proposed actions

To provide concrete answers to these problems, three actions should be given priority:

1. **Extension to digital activities of the scope of any relevant piece of legislation** with a view of **establishing a sufficient level-playing field** for any channel of commerce (e-commerce test) and better and stronger implementation and enforcement of the existing EU rules;
2. **Ongoing and new initiatives to strengthen both business and consumer confidence in e-commerce** with regard to existing regulatory grey areas

(liability of intermediaries, right to be forgotten, appropriate principles of expression of consent, logistics, parcel delivery etc.) in order to ensure a strong presence of SMEs on the digital market;

3. Where possible, the Commission should **apply State aids rules in the fight against unfair tax practices**, but this should be extended by specific legislation to **create a fair EU and, if possible international, level playing field as regards taxation.**

2.3. SMEs

Problems identified

SMEs are the backbone of the EU's economy. This is especially true in the retail and wholesale sector: 99% of retail businesses are SMEs and almost 1 out of 4 EU SMEs is in retail and wholesale sector¹⁸. In practice, retail SMEs face difficulties which limit their ability to invest, particularly in the context of the development of e-commerce, and to develop their business. As such they cannot take full benefit of the opportunities offered by the Single Market.

The Group identified a number of challenges faced by retail SMEs, such as operational and financial challenges, issues related to education and support, local and regional development, the business environment, fragmented legal frameworks and the burden of bureaucracy.

Access to finance is one of the biggest issues facing retail SMEs. It limits their ability to invest and improve or grow their stores and effectively compete with international chains. There are a number of complexities beyond the sole issue of access to finance. These include unsustainable debt levels, accessing adequate levels of finance and the ability to negotiate with financial institutions. In addition, unaffiliated retail SMEs are often not aware of the funding opportunities that exist. The lack of information therefore leads to a clear disadvantage for SMEs competing with larger retailers.

¹⁸ Retail sector (NACE code G46) and wholesale (NACE code G47).

Retail SMEs, especially those who work on their own, also face a **lack of visibility in the digital world**. It is costly to invest in innovative retail methods and new cross-channel concepts (i.e. online shopping, digital marketing etc.). Concerns were expressed that they are not visible on large commercial platforms. In addition, the use of commercial platforms is very costly for SMEs. The Group considered that many consumers could be interested to support their local retail SMEs even when they buy online, but that it is difficult for them to do so in the absence of e-commerce platforms specifically dedicated to SMEs.

The Group also discussed how certain business models could help overcome the challenges of SME retailers. Being part of legal structures such as groups of independent retailers was highlighted as an alternative for SME retailers to improve the conditions under which they can do business. However, several issues for groups of independent retailers were identified, in particular regarding the **interpretation of competition rules**. The **possibility of cooperation agreements** within such groups particularly in the context of e-commerce is crucial. If independent retailers, operating in a group under a common brand, do not have a unified pricing policy, they cannot develop an efficient online service and a uniform brand image. This creates a competitive disadvantage for independent retail SMEs compared to integrated chains.

In addition, independent retailers working together in **specific business structures** can be subject to **additional administrative and cost burdens** compared to other retail business models, resulting in a competitive disadvantage.

Proposed actions

To provide concrete answers to these problems, four actions should be given priority:

1. Existing information portals concerning access to finance should be further developed, e.g. providing an online guide, creating a one-stop-shop for retail SMEs to **access information on EU and national funds**, projects and research on SME financing.
2. Helping retail SMEs to create **SME e-commerce platforms** on which local SMEs can sell their products online. Help with digital marketing, IT skills and promotion of the platforms would be welcomed.
3. Helping independent retailers to get together and better face challenges by **providing guidance on the application of competition rules to their**



cooperation agreements. Particularly in the context of the development of e-commerce, independent retailers need to cooperate to develop an efficient online service and a uniform brand image towards consumers.

4. Facilitate, to the greatest extent possible, the **centralised treatment of administrative tasks, permits, licensing, etc. for retail SMEs cooperating in business structures** that help independent retailers to achieve economies of scale. This will help to ease the administrative burdens faced by retail SMEs. In parallel, action should be taken to reduce regulatory burden for SMEs («less red tapes»).

2.4. INNOVATION

Problems identified

Innovation is key for the competitiveness of the European retail sector. Through their direct contact with consumers and consumers' participation in social media platforms, retailers receive almost instant feedback on how well they are performing. As a result, they adapt their services through continuous innovation.

Consequently, **consumers** are at the heart of the supply chain and **driving innovation**. Successful innovation will meet consumer demand and behaviour, and at the same time provide a return on investment.

Next to the consumer, **economy and society** also boost innovation in the retail sector. Technology is also progressively advancing and plays a major role in the creation and development of processes and products, as well as in consumer interaction.

The sector is perceived as **highly competitive but wrongly viewed as being weak with regard to innovation**.

The retail sector also faces several barriers to innovation. **Lack of awareness** is the most harmful one. This awareness gap exists with policy-makers as well as the retail sector. While policy makers are not fully aware of the innovativeness of the retail sector, retailers are not fully aware of the available European innovation funding schemes. Bridging this mutual awareness gap would allow a better management of such funding schemes.

Complex regulation and lack of policy support, as well as **insufficient human resources and skills development** are also obstacles to the sector's innovation strategy.

The Group also analysed to what extent retailers can apply for **funding** under the Horizon 2020 programme. It identified an **imbalance** between the innovativeness of the retail sector and the number of funding calls under Horizon 2020 that could be considered open to the retail sector.

It found that the European Commission did not have a comprehensive understanding of innovation developed within the retail sector, but also that the sector was not fully aware of the calls within Horizon 2020 that it could apply for. There is a clear need to **build better mutual awareness** in order to stimulate the participation of the retail sector in innovation funding programmes.

At the same time, innovation should be seen by the European Commission as an **opportunity to spread knowledge and deliver strong messages** to consumers and to society more broadly. In essence, the sector can help the European Commission in better achieving its goals.

Proposed actions

To provide concrete answers to these problems and to ensure that EU funding programmes take into account the specificities of the retail ecosystem, three actions should be given priority:

1. **Involvement of retailers in advisory groups** that define innovation funding programmes.
2. **Horizon 2020 funding initiatives** should take into account the specificities of the retail ecosystem.
3. The EC should establish a **permanent or ad-hoc structure with a focal point** that acts as contact point for the retail sector and collects ideas, opinions or specific needs of the sector vis-à-vis innovation trends.

The Group already engaged into discussions to reduce the awareness gap through contacts with the Commission's Directorate-General for Research, Science and Innovation and the Directorate-General for Communication Networks, Content and Technology. It also raised the issues that it had identified in a meeting with Commissioner Moedas.¹⁹

2.5. WORKING ENVIRONMENT ISSUES

Problems identified

Retail is, as mentioned in the introduction, one of the most important employers in the EU.

To continue developing and face challenges of digitalisation, the sector needs to be able to **match the skills available to the needs of the labour market**.

The changes in the retail sector (i.e. internationalisation and above all digitalisation of the sector) have resulted in a number of emerging new skills at all levels. In parallel a skills gap is emerging: skills that are acquired through the education system do not match those needed by the sector. One way retailers are addressing skills is through in-house training. Over the last three years, the Sector Skills Council for Commerce has successfully analysed this issue by identifying, for current jobs, the evolution of skills needs', as well as new emerging occupations. The European Skills Council brought together a group of six Member States who have been pioneers in this process.

The **quality of jobs created is equally important for the attractiveness of the retail sector** to potential employees. Job quality could be increased through actions to protect the health and safety of workers and to improve the work-life balance of employees, focussing on how to reconcile employers' and workers' needs.

In this respect there is an **important role for social dialogues at company and sector level**, as a number of these issues could be addressed in collective labour agreements. But there is also an important role for the Social Dialogue for the Commerce sector at EU level, which could discuss best practices.

¹⁹ Commissioner responsible for Research, Science and Innovation.



Working conditions and job quality in retail are covered in a number of studies, but none of these studies include specific data on employment in the e-commerce sector. Given the growing importance of the e-commerce sector additional **analyses of the impact of e-commerce on the retail sector, both on size of employment and emerging job profiles (including the SME aspect), would be needed.**

Proposed actions

To provide concrete answers to the problems identified, three actions should be given priority by the different stakeholders involved:

1. **Social partners**, who play a key role in the work on **addressing skills gaps, should work in close cooperation with policy makers.**
2. The Commission should assess the **impact of e-commerce on the retail sector** in particular in terms of employment (jobs created vs. jobs destroyed; quality of working conditions etc.).
3. **Social partners** at all levels **should work together** according to national law and national industrial systems **to promote the effective functioning of social dialogue** between representatives of management and employees.

3. CONCLUSIONS

The Group calls on the Commission to carefully consider these recommendations also in the context of the on-going discussions on a Strategy for the Internal Market to be adopted by the end of this year. The retail sector is crucial for the European economy and should be at the heart of this strategy. The Group also calls on Member States to support the Commission in its efforts to make the retail Single Market function better, as well as to take into consideration these recommendations when designing their national retail policies.

