



For a Single Market Ombudsman in every EU State

Since its inception, some thirty years ago, the Single Market has been affected by a huge compliance deficit. All stakeholders, from the business community to the Member States and the European Commission, regularly lament the untapped potential of the Single Market resulting from this incorrect application of the EU rules.¹

Over the years, various tools – from SOLVIT and the Single Market Scoreboard to the EU-pilot or SMET – have been introduced to address the obstacles to the freedom of movement. Yet, for all their success stories and individual cases solved, these tools have not substantially reduced the compliance deficit. More needs to be done to create a culture of compliance in the Member States.

It is with this objective in mind that the National Board of Trade proposes to introduce a Single Market Ombudsman in every EU State. The main aspects of this proposal are outlined in this paper.

The Single Market suffers from a huge compliance deficit

Three figures illustrate the size and nature of the compliance problems affecting businesses and citizens in the EU today:

- **700 billion** – that is the cost in euros of non-compliance for goods and services alone.² This is the equivalent of the ‘Next Generation EU’ recovery package. At the micro-economic level, this compliance gap translates for companies and citizens into red tape bureaucracy, additional transaction costs, loss of competitiveness and missed business opportunities.
- **100,000** – that is the number of national, regional, and local authorities which are responsible for the daily application of Single Market rules in the Member States.³ Be it in the context of local planning zones for the setting up of a retail business, the procurement of food for school meals, the mutual recognition of foreign qualifications or the control of labelling requirements, businesses and citizens are dependent on these 100,000 public bodies for the correct enforcement of their EU rights.

¹ As an example, see the Commission’s communications over the last twenty years: “[Long term action plan for better implementation and enforcement of single market rules](#)” (2020), “[EU law: Better results through better application](#)” (2016), “[A Europe of Results – Applying Community Law](#)” (2007) and “[Better Monitoring of the Application of Community Law](#)” (2002). With regard to the Member States’ calls for better enforcement, see for instance the letter on “[The future development of the Single Market and European digital policy in view of preparation for the next Strategic Agenda](#)” (February 2019). With regard to the business community, see for example the report of the European Round Table for Industry “[Renewing the dynamic of European integration: Single Market Stories by Business Leader](#)” (December 2021) and Business Europe “[Real effort on removal of Single Market barriers yet to be seen](#)” (April 2021).

² European Commission “[A single market that delivers for businesses and consumers](#)” (2020).

³ Eurostat “[Statistical regions in the European Union and partner countries](#)” (2020 edition, p.7-8).

- **One** – that is the number of Guardian of the Treaties, the European Commission, which is the sole institution that can monitor and effectively enforce the correct application of Single Market rules in the Member States.⁴

A simple look at these figures shows that one of the reasons for such a huge compliance deficit in the EU is that it is impossible for one single institution – the European Commission – to control the application of the EU rules by the 100,000 national, regional, and local authorities.⁵ The Commission may focus its supervision on critical issues, such as the timely transposition of EU directives, but the bulk of compliance problems will remain under the EU’s radar.⁶

Certainly, the tools put in place by the Commission (from SOLVIT to SMET), may prove successful in removing barriers in individual cases. However, the soft law nature of most of these tools and their reliance on the goodwill of the Member States limit their ability to significantly reduce the EU’s compliance deficit. If anything, the few available studies on the cost of non-compliance show a worsening situation over the years and that the figure of €700 billion mentioned above is a new low.⁷ Thus, it is important to see the forest for the trees and realise that more needs to be done to unlock the potential of the Single Market.

This is why we propose to introduce a Single Market Ombudsman in every EU State. As a national, independent body, its role would be to protect the EU rights of businesses and citizens at the national level.

A Single Market Ombudsman in every EU State

Our proposal is based on three pillars:

Firstly, **each Member State shall designate an ombudsman for the Single Market.**

Being part of the administration of the Member States, the ombudsman would be able to communicate with, and monitor the national and local authorities in charge of applying EU rules in the country.

The concept of “ombudsman” is well-established in the legal traditions of most Member States.⁸ Its reputation as an independent and efficient supervision body makes it a suitable instrument to fight maladministration in a wide range of areas. In that sense, a national ombudsman for the Single Market would also fit in the legal architecture of the Member States.

Secondly, the Single Market Ombudsmen shall have access to effective remedies such as **the right to bring cases before the national courts.** This is an essential element of the proposed reform and one of the crucial differences with soft law mechanisms such as SOLVIT. Obviously, dialogue with the national and local authorities is always preferable, but it needs to be combined with sanction mechanisms to work more effectively.

4 As shown below, this is the case for most of the Single Market but in some very specific areas, such as financial services, energy or telecoms, national enforcement agencies have been set up in the Member States to safeguard compliance with EU rules.

5 In that respect, it is worth noting a recent study that shows that the number of infringement proceedings has significantly dropped since the early 2000s (by almost 90% for infringements referred to the CJEU), see Kelemen, R. D. and Pavone, Tommaso, “Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union” (December 27, 2021).

6 National Board of Trade “Reforming compliance management in the Single Market – Discussion on a decentralised enforcement of EU law” (April 2019).

7 Compare the €700 billion mentioned by the Commission for goods and services only in 2020 with a study from 2012 according to which the cost of non-compliance for four areas (taxation, services, public procurement, and mutual recognition) was equivalent to a “large two digit billion loss in euros” (Copenhagen Economics “Delivering a Strong Single Market”, 2012).

8 According to the International Ombudsman Institute, almost every Member State in the EU, has in place an ombudsman that oversees the legality of actions taken by the public authorities (an exhaustive list is available at: <https://www.theioi.org/loi-members#anchor-index-1703>). That is for instance the case with the Swedish [Justitieombudsmannen](#), the French [Défenseur des droits](#), the Austrian [Volksanwaltschaft](#) or the Portuguese [Provedor de Justiça](#).

In fact, in other areas of EU law, such as competition law or the protection of personal data, the recourse to judicial proceedings is central to an effective enforcement policy. As an example, the GDPR requires that: *“Each Member State shall provide by law that its supervisory authority shall have the power to bring infringements of this Regulation to the attention of the judicial authorities and where appropriate, to commence or engage otherwise in legal proceedings, in order to enforce the provisions of this Regulation.”*⁹

Thirdly, a **network of Single Market Ombudsmen** shall be set up under the auspices of the European Commission to safeguard a uniform interpretation of the EU rules in the Member States.¹⁰ Such network could allow for an exchange of best practices and may also include a case allocation mechanism for infringements that affect several Member States, as is the case in other areas.¹¹

Objective: the creation of a culture of compliance in the Member States

The proposal for a Single Market Ombudsman in every EU State would achieve two objectives.

The most immediate one would be to effectively address the obstacles faced today by businesses and citizens that cannot be handled at the EU level. In that respect, private parties may find it a more appropriate alternative to rely on the actions of a Single Market Ombudsman for the protection of their EU rights, rather than engaging themselves in costly, time-consuming, and highly uncertain proceedings.

In the longer term, the existence of such a player in the national arena would contribute to the creation of a culture of compliance within the national administrations and thereby prevent new obstacles from arising. A culture of compliance cannot be imposed from the top down. Instead, our proposal for a Single Market Ombudsman aims at creating a dynamic of dialogue and enforcement at the national level that would, in turn, foster awareness of, understanding for and, ultimately, compliance with EU rules. As opposed to the compliance tools already in place, the real added value of this proposal is to **combine a physical presence in the Member States to reach out to the national administrations with hard law remedies to safeguard efficient supervision.**

Ways forward

The purpose of this paper is not to provide a ready-made proposal but rather to outline the main aspects of a reform that would, in a concrete and significant manner, address the compliance deficit in the Single Market. We are conscious that more flesh needs to be put on the bones of this idea, for example with regard to the scope of activities of the Single Market Ombudsmen,¹² their powers, and resources as well as their relations to existing

⁹ Article 58(5) of the General Data Protection Regulation (2016/679/EU).

¹⁰ Similar networks are already in place in various areas of Union law and aim notably at avoiding divergences of interpretation by specialised authorities, for instance for the enforcement of the EU rules on competition (the European Competition Network), data protection (the European Data Protection Board) or consumer protection (the Consumer Protection Cooperation Network).

¹¹ For instance, within the European Competition Network grouping the European Commission and the National Competition Authorities (NCAs), a mechanism makes it possible to re-allocate to the Commission cases that affect several Member States at the same time.

¹² For instance, the Single Market Ombudsmen could supervise the correct application of the whole EU acquis in the Member States or focus on specific areas of the Single Market, such as the Services Directive (2006/123/EC) which is particularly affected by compliance problems. The latter option could be designed as a pilot project upon which the mandate of the Single Market Ombudsmen could progressively be expanded to other areas.

compliance tools in the EU, such as SOLVIT.¹³ Those are issues for the stakeholders and decision makers to discuss.

To the question whether the introduction of a Single Market Ombudsman in every EU State is at all doable, viable or even realistic, the National Board of Trade would like to offer two answers.

Firstly, similar reforms have been done before. In fact, in a growing number of areas, from competition policy to the regulation of financial services and network industries or the protection of personal data, the application of EU rules in the Member States is monitored by national enforcement agencies. Making sure that these policy-specific rules apply correctly is partly the work of the national competition authorities, the national data protection agencies or the national telecom regulators. We know that this form of decentralised enforcement works in certain EU areas and merely propose to extend this to the Single Market as a whole.

Secondly, do we have the choice? Aside from the already existing compliance deficit of several hundred billion euros mentioned above, it is crucial to make sure that decision makers do not navigate in the blind in devising new policies and, thus, can trust that upcoming EU legislation will apply correctly. At a time when all stakeholders acknowledge the central role of the Single Market in the road to recovery and in supporting the digital and green transitions,¹⁴ can the EU and the Member States afford to launch these huge reform projects without knowing if and, to which extent, they will be implemented in practice?

¹³ We view the Single Market Ombudsman as the missing link between, on the one hand, the European Commission entrusted with hard law tools (the infringement proceedings) but with little visibility of local compliance problems and, on the other hand, SOLVIT with a presence in the Member States but limited to soft law tools (informal dialogue). Thus, the Single Market Ombudsman is not meant to replace, or duplicate SOLVIT. If anything, these two instruments would complement each other. However, it cannot be excluded that, in term, the SOLVIT-centres would be strengthened to the point that they would, in practice, become Single Market Ombudsmen.

¹⁴ See for instance, European Commission "[Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery](#)" (May 2021).

This paper is authored by Olivier Linden, Senior Legal Adviser at the National Board of Trade. It is based on a longer memorandum (in Swedish) by the National Board of Trade *Inremarknadsombudsmän behövs för att skapa en efterlevnadskultur* (June 2021) presented at EU Industry Days (February 2022). The National Board of Trade is an independent agency and its views do not necessarily reflect those of the Swedish government.