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WHAT IS WRONG WITH THE SINGLE EUROPEAN  
MARKET AND HOW TO MOVE FORWARD:  
TOWARDS A SERVICE AND DIGITAL MARKET?

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## ABSTRACT

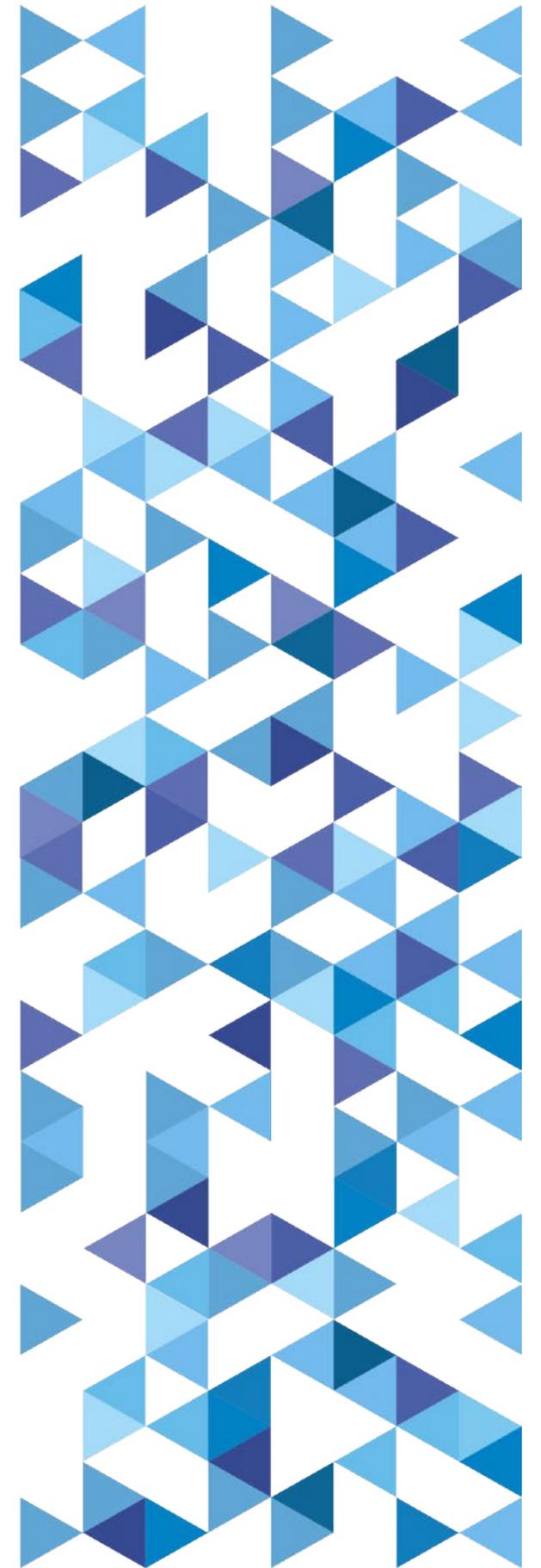
The project of European Single Market declared to deliver four freedoms – freedom of movement of goods, services, labour and capital. The degree to which it has delivered on this promise after 25 years of its functioning varies across the fields. ESM as an ongoing project requires a flexible approach towards reform to maximize gains not only from traditional industries that achieved a high level of liberalization already in the early days of the ESM, but also in advanced services and digital agenda that are both laggards in liberalization.

EU's inconsistency in pursuing Single Market implementation led to the creation of a complex, yet incomplete web of regulations, rules and partial freedoms that has reduced potential gains from its own existence. Building a single market requires not only an exchange of trading opportunities by lowering barriers to trade, but also building institutions and reducing market distortions of a structural nature.

Despite recent attempts to reverse Europe's decreasing competitiveness in digital economy through the introduction of Digital Single Market Strategy, Europe is lagging in both development and deployment of digital technologies. Several legal barriers in Europe remain in place, spanning areas such as data protection and e-privacy, content and copyright, liability of online intermediaries, e-payments, and electronic contracts.

This paper examines the limits of current level of integration, especially in the field of services liberalization and digital economy. It develops on the argument that the more European economy comprises of services and digital economy, the less there is of the European Single Market. It also presents a set of recommendations for advancing the Single Market project towards a flexible and business friendly regulatory framework in which innovation can flourish.

The recommendations include a thorough revision of ESM's current regulatory regime, completion of single market in services, especially in the field of services of general interest and liberalization of network industries. Digital economy of Europe would benefit from innovation-friendly policy that allows innovative companies not only to grow, but also to fail less painfully. This policy includes simplification of e-commerce, patent or copyright. Finally, a functioning single market must be complemented with educational system responsive to dynamic global competition, digital government and digital diplomacy that overcomes the borders and is able to resolve challenges of digital economy in a constructive and effective manner.



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# WHAT IS WRONG WITH THE SINGLE EUROPEAN MARKET AND HOW TO MOVE FORWARD: TOWARDS A SERVICE AND DIGITAL MARKET?



## INTRODUCTION

Almost 25 years after its establishment, one may ask what is wrong with EU's single market. In a way, there is a simple and laconic answer: the single market is in many ways an illusion and it does not really exist. A more detailed answer could be that the single market in the EU exists only nominally and there are substantial barriers to cross-border exchange – more so in some sectors than others – that decrease the growth potential of the European economy.

The basic idea of the single market is based on a near-perfect liberalization and Europeanization of five types of markets that create a foundation of modern economy – markets of goods, services and three factors of production – labour, capital and knowledge/technology (Pelkmans, 2016). This optimum market integration can be achieved through the combination of removal of intra-EU border barriers to trade and movement, and of eliminating distortions in the market through harmonizing regulatory frameworks. The ideal arrangement of the ESM can be designed based on its functional logic – to generate additional growth beyond what an individual member state could achieve without the current state of integration and cooperation.

Few would question the ESM's contribution to economic growth and consumer welfare in the EU, but the real contribution remains uncertain. The Cecchini Report from 1988 estimated that the establishment of the ESM would bring an additional 5 % to 6.5 % in terms of GDP and a 5 million increase in employment. Despite complicated quantification of economic benefits that the European project, and most importantly, the European Single Market, has achieved, there have been attempts to quantify its benefits.

However, as argued by many (Monti, 2010; OECD, 2016; Pelkmans, 2016; Pataki, 2014; Erixon and Georgieva, 2016), only a genuine and completed single market can deliver on the estimates of its impact on the EU economy. Yet current state of the ESM is neither completed nor genuine and there is little hope for change. The report by former EU Commissioner and Italian prime minister Mario Monti (Monti, 2010) reopened the internal market discussion with the call for building a consensus and delivering a stronger single market. This call was followed by two Commission proposals containing sets of actions to further develop the Single Market and exploit its untapped potential called Single Market Act I and Single Market Act II. Both were, however, rather modest and did not bring any significant improvement in the crucial areas. The European authorities have been trying to address the shortcomings of the European Single Market through a variety of general programmes and sector-specific initiatives, including the most recent one – Digital Single Market.

This paper examines the limits of current level of integration, especially in the field of services liberalization and digital economy by taking a closer look at the main issues raised in the introduction. It develops on the argument that the more European economy comprises of services and digital economy, the less there is of the European Single Market.

The first section of this paper looks the economic effects of the ESM in the fields of four freedoms – freedom of movement of goods, services, labour and capital. The second section deals with the 'un-singleness' of the ESM and its limitations on the EU and national level. In this section, a special focus is put on the limitations that influence the services sector and the digital economy. Third section then deals with the actual impact of the incomplete European Single Market on the fragmentation of the services sector in the EU, as reflected in the regulatory diversity in network industry, professional services or product market regulation. Finally, this paper presents a set of recommendations for advancing the Single Market project towards a flexible and business friendly regulatory framework in which innovation can flourish.

The recommendations include a thorough revision of ESM's current regulatory regime, completion of single market in services, especially in the field of services of general interest and liberalization of network industries. Digital economy of Europe would benefit from innovation-friendly policy that allows innovative companies not only to grow, but also to fail less painfully. This policy includes simplification of e-commerce, patent or copyright. Finally, a functioning single market must be complemented with educational system responsive to dynamic global competition, digital government and digital diplomacy that overcomes the borders and is able to resolve challenges of digital economy in a constructive and effective manner.

## ECONOMIC EFFECTS OF THE EUROPEAN SINGLE MARKET

The ESM has declared to deliver four freedoms – freedom of movement of goods, services, labour and capital. The degree to which it has delivered on this promise after 30 years of its functioning varies across the fields. According to Fournier et al. (2015), joining the ESM has a positive effect on internal trade, but it could be enhanced by removing implicit barriers to trade.

Traditionally, there is a high level of integration in trade in goods, with the EU Member States trading more with other Member States than with the countries outside the EU. Except for Malta and the UK, all Member States report higher proportion of total trade in goods with their partners within the EU. This proportion varies from 82 % in Slovakia to 44 % in the UK. However, contrary to the rationale of ESM, the proportion dropped between 2003 and 2015. Overall proportion of intra-EU trade in goods decreased from 69 % in 2003 to 63 % in 2015, with some Member States experiencing a drop of more than 10 p.p. (EUROSTAT, 2017a). Moreover, intra-EU trade in goods constitutes a much smaller proportion of GDP than intra-US trade in goods. Whereas the EU's intra-EU trade in manufactured goods accounts for app. 20 % of GDP, in the USA it is 35 % (OECD, 2016).

Trade integration in services has been even slower. Even though relative numbers show that 56 % of all international services transactions took place within the EU-28, 44 % with the non-EU countries, the proportion of intra-EU trade on GDP remains rather low. Even though intra-EU trade in services (as a percentage of GDP) grew from 4.8 % in 2004 to 6.6 % in 2014, there is no significant improvement after the adoption of Services Directive in 2009. Thus, it is difficult to assign the growing trend to the ESM policies.

**Intra-EU Trade in Services (% of GDP)**

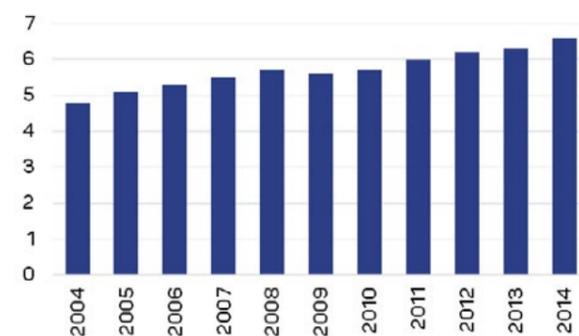


Figure 1: Intra-EU Trade in Services (% of GDP). Source: OECD (2016)

Decreasing variation in Member States' unemployment rates, converging labour productivity and higher flexibility of labour markets reflected in labour mobility were claimed as the main benefits of free movement of labour within the ESM. However, current level of labour market integration has hardly delivered expected effects. Continuing fragmentation can be observed in unemployment rate variability. In March 2017, there was a difference of 20.3 p.p. between the best and worst performer – the Czech Republic with 3.2 % unemployment rate and Greece with 23.5 % (EUROSTAT, 2017b). This variation has been growing since the outbreak of the crisis, with a short drop during the crisis due to short-term increase in unemployment rates across otherwise healthy labour markets. Compared to the US unemployment rate variation between states that oscillates around 1 % in the long run, the EU remains vulnerable to cyclical changes in unemployment (Miccosi, 2016).

In the field of labour productivity, significant differences between the Old and New Member States remain. More than a decade after the 2004 enlargement, Poland reaches to 59 % of EU28 average per hour worked, Slovenia to 78.9 %. Old Member States report higher than EU average productivity, except for Greece, Portugal and Spain.

**Labour Productivity and Compensation (2016, EU28 = 100)**

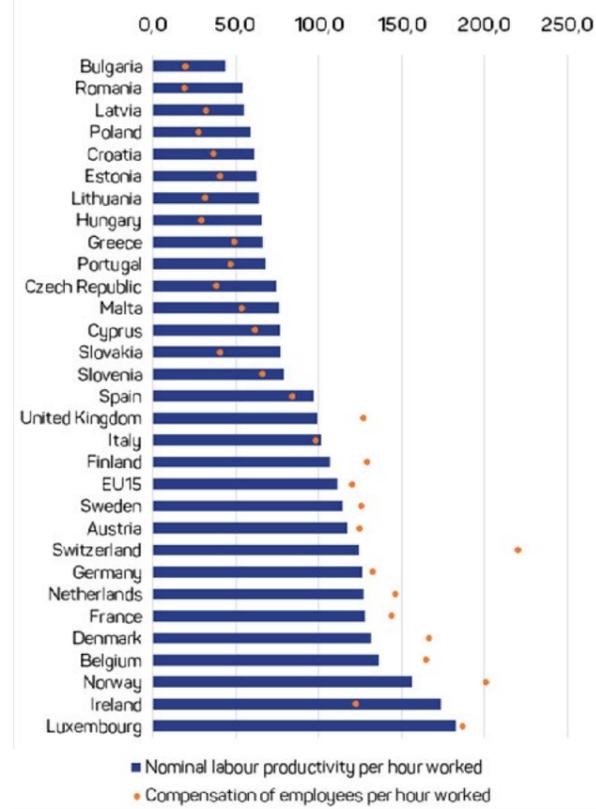


Figure 2: Labour Productivity and Compensation. Source: EUROSTAT

Despite significant differences between compensations of employees between the EU Member States, there is a limited mobility of labour within the EU. According to the latest data of the European Commission (2017), only around 11.3 million EU28 citizens of working age were residing in Member State other than that of their citizenship. The main countries of residence are Germany, Spain, Italy and France which together constitute around 73 % of total intra-EU mobility.

Overall labour mobility within the EU remains significantly lower than in the United States, where more than 2 % of workforce lives and works in a different federal state than their home state. The mobility within the EU, as the Commission (2017) notes, is on a similar level as mobility between Canadian provinces with different languages. Moreover, labour mobility between NUTS-1 regions within EU Member States is similar to Australia's labour mobility and even higher than labour mobility in Canada. This shows a significant characteristic of the intra-EU labour mobility – intra-state labour mobility does not differ significantly from other developed economies, but language and cultural barriers play an important role in intra-EU labour mobility.

**Price Convergence Indicator**

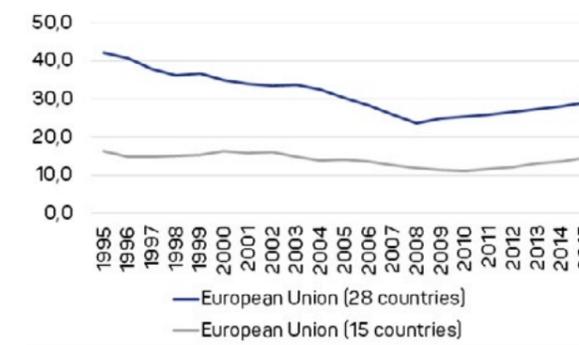


Figure 3: Price Convergence Indicator 1995 – 2015. Source: EUROSTAT

Price convergence between EU countries also remains slow. While variation in price level indices<sup>1</sup> among the Old Member States (EU15) between 1995 and 2015 was stable and rather low – at approximately 15 %, price level variation is wider in the EU. Prior to financial crisis, there was a stable drop in price level variation. However, after the crisis, price levels between Old and New Member States started to diverge again.

<sup>1</sup> Price convergence indicator measures variation of comparative price level index for final household consumption in per cent for particular groups of countries

## THE 'UN-SINGLENES' OF THE ESM

European Union's inconsistency in pursuing Single Market implementation led to the creation of a complex, yet incomplete web of regulations, rules and partial freedoms that has reduced potential of gains from its own existence. Building a single market requires not only an exchange of trading opportunities by lowering barriers to trade, but also building institutions and reducing market distortions of a structural nature. Thus, the ESM as an ongoing project requires a flexible approach towards reform to maximize gains not only from traditional industries that achieved a high level of liberalization already in the early days of the ESM, but also in advanced services and digital agenda that are both laggards in liberalization.

The 'un-singleness' of the European Single Market can be seen in an analogy with the incompleteness of the European Monetary Union and its solution. As Pelkmans (2016) argues, the ESM, similarly to the EMU, was designed to create a collective – club – good, the single market and the currency union respectively. This 'club' good was, however, designed in an imperfect manner. The insufficiency of institutional infrastructure of the EMU became apparent with the outburst of the 2008 financial crisis and the sovereign debt crisis that followed shortly. The reaction of the European authorities was twofold – on one hand, a deeper centralization through the creation of the European banking union and strengthening the preventive arm of fiscal policy on the other hand. This was achieved through a more thorough surveillance of euro area members via revision of the Stability and Growth Pact and the European Semester. A similarly resolute approach could be used also towards strengthening ESM's functional, regulatory and economic logic, less so its political dimension.

### The limitations of a genuine ESM

Functional difficulties remain, particularly in the services market and digital economy. According to OECD (2016), absence of structural reform and the weaknesses in the services, capital and labour market are the main hindrances of completing the ESM. The main barriers identified by Pataki (2014) include delays in the adoption of directives in national legal frameworks, infringements of single market regulations and existence of 'home bias'<sup>2</sup>. Erixon and Georgieva (2016) argue there are three main issues regarding the functioning of the ESM – (i) excessive, complex and inconsistent legislation, (ii) complex and conflicting regulation (iii) and the transposition deficit. In this paper, the focus is put on two kinds of limitations – the EU-level limitations and the Member State level limitations. The EU-level limitations are mostly of a regulatory nature, caused by excessive, complex and often conflicting regulation. The limitations

<sup>2</sup> Home bias is explained as the existence of various cultural norms, habits or preferences and differences in economic and political organisational systems that can explain part of the remaining boundaries in achieving a genuine ESM.

on the national level are related to the unwillingness of Member States to sacrifice parts of their sovereignty over regulatory regimes.

#### EU-level limitations

Market reforms no longer power the economy in a way they used to in the period of fast liberalization in 1980s and 1990s. Current trend of declining regulatory freedom has been often connected to the wave of protectionism as a reaction to the economic crisis of 2008. However, this trend covers far more areas than just financial services and it has been present even before the economic crisis.

EU regulation has grown from 26 500 legal acts in 2009 to over 30 000 in 2016 (Erixon & Georgieva, 2016). The legislative complexity of the ESM has often been blamed for Europe's lack of competitiveness. Although the EU managed to significantly lower the space for market failures, fully open trade in goods, limit distortive interventionist regimes in some areas of transport and network services or widen the scope of the EU competition policy, numerous cases of inadequate, incomplete or conflicting regulatory acts reveal burdensome nature of EU's regulatory regime. Three types of EU-level limitations of liberal market will be presented in this paper – one example that imposes excessive burden on SMEs (REACH)<sup>3</sup>, thus hampering competitiveness, another example of a regulation contradictory to the ESM principles as such (GMOs) and the third example shows fragmentation of regulatory framework that holds back intra-EU trade (Consumer Protection).

#### REACH Regulation

REACH is a regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals. It came into force in 2007, replacing a number of EU legislative acts. REACH applies to all chemical substances, not only those used in chemical industry and in principle, it requires companies to identify and manage risks linked to the chemicals they use in their business. Thus, it places the burden of proof on companies that are obliged to report to the European Chemicals Agency. Companies have until the end of 2018 to comply with its requirements. As Gubbels, Pelkmans and Schrefler (2013) warn, REACH is a very demanding system to comply with, especially for SMEs that account for 95 % of companies in EU chemistry industry. Due to very burdensome nature of the regulation, competitiveness seems to be hampered, while human health and environmental protection benefits may only materialize in the long run. REACH is perceived as a constraint to innovation with a negative impact on the go-to-market strategy of new companies (CSES, 2012). After years of lobbying and many studies, its negative impact on SME competitiveness was recognized also by the European Commission in 2012. In its General Report on REACH, it included a list of recommendations

<sup>3</sup> SME stands for 'small and medium enterprises'.

for SMEs<sup>4</sup> to deal with its burdensome nature. The impact on companies will mostly be reflected in personal and administrative costs, with Gubbels, Pelkmans and Schrefler (2013) estimating SMEs to commit up to one FTE<sup>5</sup> for REACH compliance activities. However, as Pelkmans (2016) points out, it is not until at least 2019 that the EU can improve the regime due to the procedural nature of this regulation as the process of adjusting to new rules has already been initiated.

#### GMO Legislation

Second example presents a legislation conflicting with the core principles of free movement of goods – new GMO legislation<sup>6</sup>. The EU already has one of the strictest GMO policies in the world and the cultivation of GMOs is only allowed after thorough inspection of the European Food Safety Authority in cooperation with national evaluation agencies. This set up created a very strict procedure that does not allow for any GMOs of a questionable nature to enter the ESM. However, in 2015, the EU went even further by allowing the Member States to restrict or ban the growth of already approved GMO crop on their territory on not only environmental, but also other grounds, such as land planning requirements, socio-economic impact or agricultural policy objectives. Moreover, special attention will be given to cross-border contamination. As Erixon and Georgieva note (2016), it is against the very nature of free movement of goods and sets a dangerous precedent for other sensitive products or substances. New GMO legislation does not bring any benefit to the EU consumers but rather it damages the biotech industry due to uncertainty and unpredictability of the EU's and Member States' decisions that can be based not only on scientific, but also on social or political grounds (Pelkmans & Renda, 2014).

#### Consumer Protection Rules

Consumer protection rules present another telling example of fragmentation of the EU's single market regulation. What was often hidden behind the consumer protection laws was an implicit barrier to entry for foreign businesses. This practice not only hampers the freedom of movement of goods and services, it also prevents growth of digital economy through preventing growth in cross-border e-commerce. There has been some development recently, especially with the introduction of alternative and online dispute resolution (ADR/ODR) that allows consumers and traders to settle their dispute out-of-court through mediation, conciliation, ombudsmen, arbitration or complaints boards in any of the 23 official EU languages. In addition to that, ODR platform is a web-based platform that helps settle disputes over

<sup>4</sup> Full name is List of specific recommendations from the Commission with the aim to reduce the administrative burden of REACH by SMEs while maintaining their ability to fulfil all REACH obligations.

<sup>5</sup> FTE stands for 'full time equivalent'.

<sup>6</sup> Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory.

online purchases of goods and services. However, it is very costly for businesses selling online to comply with variety of consumer protection laws which are more often a labyrinth of traditions and protectionist policies rather than a genuine difference in consumer protection principles. Thus, harmonization of basic principles such as liability, burden of proof or right to terminate a contract would hardly affect the consumer, but would lift a huge burden for the businesses.

The interaction between regulation, innovation and competitiveness is rather complex and multidimensional and it is no ambition of this paper to claim that EU regulation hinders EU's innovative and competitive industries. However, it is necessary to point out the shortcomings of the EU's approach towards setting up ESM regulatory regime. Examples of REACH and GMO regulations and consumer protection rules show that conflicting, ill-defined or incomplete regulation can hinder innovation as it places more implicit burdens on businesses, thus amplifying the costs of compliance and taking investment from innovation to operational costs. This is particularly challenging for SMEs that are a backbone of the European economy. Furthermore, the EU does not seem to have reflected the mistakes made with the REACH regulation. One of currently most discussed regulations – General Data Protection Regulation (GDPR) – has been widely criticized by digital enterprises for its high administrative burden and unclear legal rules posed by a logic that stands on very similar principles as REACH regulation. It obliges digital companies to name a data-privacy officer, conduct data-privacy impact assessments and investigate data privacy measures of their suppliers. According to Lee-Makiyama and Legrain (2017), this measure will severely hamper innovation in digital economy, leading to the state in which digital entrepreneur's first employee would be 'neither a developer nor a sales manager, but rather a privacy lawyer'.

#### Member State level limitations

Despite integration and commoditisation of competition policy, state aid rules and other important areas of free trade, Member States still hold a strong mandate in many areas, including services or network industries. In addition to that, the process of transposing the EU law into the national legal order offers a ground for postponing or avoiding compliance with some of the undesirable acts. Transposition deficit reported in the European Commission's Single Market Scoreboard is often mentioned as a viable indicator of the Member States' compliance with the ESM rules. However, as Erixon and Georgieva (2016) warn, it is a ratio of total number of directives to infringement cases, thus its decreasing tendency does not reflect the drop in the number of infringement cases, but rather a faster increase in number of directives. To reflect this fact, infringement cases will be used to demonstrate the limits of the ESM reflected in the transposition deficit and infringement procedures<sup>7</sup>.

<sup>7</sup> The Commission may start 'infringement proceedings' if it

The latest available statistical data from 2015 show that the total number of cases in December 2015 was 732 – an average of 26 cases per Member State with duration of 30.9 months per case. However, taking a closer look on the country statistics, there is a prevalence of larger, old Member States with a higher number of infringement cases. Germany stands out with 55 cases and an average duration of 32.5 months per case, followed by Greece and Italy with 50 cases, France and Spain with 49 cases and Poland with 44 cases. These 6 Member States represent more than 40 % of all infringement cases. New Member States seem to have less difficulty complying with the EU law, Estonia with 6 cases, Latvia with 7 and Malta with 8 open cases in December 2015, although Malta leads in an average duration of a case – 51.2 months.

Sector-specific statistics support the argument that the Single Market for services is laggard partially due to lack of commitment of the Member States to harmonize the services sector and implement the relevant directives. Out of 732 infringements, 106 concerned direct and indirect taxation, with an average duration of a case of 35 months. Air transport follows with 82 open cases and an average duration of 49.5 months, water protection and management came third with 56 cases. Finally, 39.7% (482 cases in total) of all cases are due to late transposition of directives, whilst 20.4 % is due to incorrect application of these directives. This demonstrates the unwillingness of Member States to conform to some aspects of the ESM.

Lack of integration and market liberalization seems to be rooted not only in the uneven regulation of different markets, but also in the unwillingness of some Member States to give up on some of their national regulatory powers. The areas in which Member States seem to be more protectionist are the ones that are crucial for opening the services market – taxation and services of general interest.

A major single market disappointment and an obvious example of ESM's incompleteness has been the limited extent to which services markets have been integrated despite their significant contribution to the economic output and employment in Europe. The barriers to cross-border trade in non-financial services remain high; national regulatory regimes are very different and complex and services sector is fragmented along national lines with a high level of discretion by MSs, and there is little confidence that they would not be used to protect domestic companies. Too often are services delivered to customers abroad by means other than cross-border trade, for example by establishing offices in different countries. The gains from elimination of barriers would thus be significant.

## INCOMPLETE SERVICES SECTOR LIBERALIZATION AND ITS EFFECTS

There is a direct cost to the EU and its Member States of failing to build a better framework for services integration, and it is represented in basic indicators of health and competitiveness of the services sector. Erixon and Georgieva (2016) argue that there is a high productivity gap in business services between the EU and US and a part of this gap results from insufficient integration of services sectors in the EU. But the costs of “un-singleness” of the single market for services do not only affect the services sector; they spread widely through the economy and reduce the general pace of and benefits from structural market change.

To lower the gap in productivity of services due to incomplete single market, a Services Directive was adopted in 2006 and entered into force in 2009. However, sectors such as utilities or network industries remain excluded, lowering the overall impact of the Directive on services' trade openness in the ESM. Although it is premature to thoroughly evaluate the effect of the Services Directive, OECD (2016) estimates that its impact on GDP growth since 2012 has been rather modest, at app. 0.1 % of the EU GDP. Moreover, the European Commission's assessment published in 2012 estimated that in the course of 5 to 10 years, Services Directive measures are to generate approximately 0.8 % of EU GDP growth. However, impact varies from 0.3 % to 1.5 % between the Member States<sup>8</sup> and sectors. In a 2015 Update of the 2012 Study, the Commission assessed regulatory changes over the period of 2012 and 2014. Reform efforts were found to be uneven and slow in pace.

According to Commission (2015a), only 13 out of 28 Member States reported a positive balance of service sector liberalization activities between 2012 and 2014. 12 countries<sup>9</sup> did not report any activity in liberalization and two countries introduced new services sector restrictions. The most reform-driven countries were Greece, Italy and Portugal, where the highest number of service sector barriers were abolished or partially reduced. It is no coincidence as these countries were under economic adjustment programmes with an extensive set of service sector reforms. On the other hand, Ireland and Hungary introduced new restrictions, with Hungary reversing some previously achieved reforms (European Commission, 2015).

In addition to the overview of restriction changes, the European Commission also estimated the potential of regulatory changes on the MS's GDP over the period of five to ten years. The highest positive GDP impact

<sup>8</sup> The impact varies from below 0.4 % in Bulgaria, Romania, Malta, Austria and Slovenia, to app. 1 % in Greece, UK, France and Sweden, to 1.4 % in Luxembourg and Spain and 1.8 % in Cyprus. (European Commission, 2012)

<sup>9</sup> The Member States with no change in the number of restrictions were the Czech Republic, Denmark, Germany, Finland, Latvia, Lithuania, Malta, the Netherlands, Sweden, Slovenia and the United Kingdom.

is expected in Greece (1.1 %), Estonia (0.7 %), Spain (0.5 %), Italy (0.4 %) and Portugal (0.3 %), negative impact of newly-introduced restrictions on GDP is expected to occur in Ireland (-0.3 %) and Hungary (-0.2 %). The mid-term weighted average impact on the EU GDP is estimated at 0.1 %.

The costs of “un-singleness” of the single market for services spill over to other sectors of economy as services sector has many linkages with the rest of the economy. Share of services on GDP has gradually increased in the last 20 years in both the US and the EU, although the US economy has relied on services more heavily. A significant proportion of services trade concerns the supply of services to other businesses in almost any sector of the European economy, but particularly industry and manufacturing where services are increasingly important both as inputs and as outputs. Therefore, integrating services market is of utmost importance to the ESM project were it to succeed in a long run.

### The effects of incomplete single market in services

The ESM's two defining principles of integration were first defined by Jan Tinbergen (1954) as *negative* and *positive* integration. It has been often used in explaining the dynamics of the ESM, particularly the role of the European Court of Justice (ECJ) in liberalizing the market. Negative integration, defined as a removal of restraints on free trade and other barriers to competition has been, according to Scharpf (1999; 2010), widely privileged over positive integration, that lies in mutual reduction of regulation, harmonisation of regulatory standards, modification of existing institutions, creation of new - supranational - ones and sharing common powers. As Weiler (1999) argues, the focus of politicians and wider public has been often put rather on the positive integration, even though the negative integration reflected in the role of the ECJ in single market integration has been decisive in shaping the current state of the ESM. The clearest defining example of such behaviour is the ECJ's 1979 Cassis de Dijon ruling that declared no requirements of harmonization of regulatory standards for trade in goods, and introduced a principle of mutual recognition. Thus, this ruling had simplified the process of common market creation almost a decade before the European Single Market project was introduced.

Although there has been major activity from the ECJ towards liberalizing the EU's market, the implementation of existing rules and an EU-wide harmonisation – or at least growing proximity – of national regulatory frameworks has proved difficult to achieve. And so, although there might seem to be few nominal barriers to trade and freedom of movement in the ESM, in practice, major differences between national regulatory frameworks remain.

The effects of positive integration – streamlining the regulatory policies and enhanced cooperation – should be reflected in lowering the regulatory burden of Member States' markets. However, there is little evidence that the ESM would lead to convergence of regulatory regimes other than the general global trends. To demonstrate the general trend in lowering the regulatory burden, the OECD's Regulatory Impact (RI) indicator is used. RI measures potential costs of the anti-competitive regulation captured by the indicators of sector regulation in 37 sectors of the economy that use the output of these sectors as intermediate inputs.

#### Regulatory Impact Index (1975 - 2013)

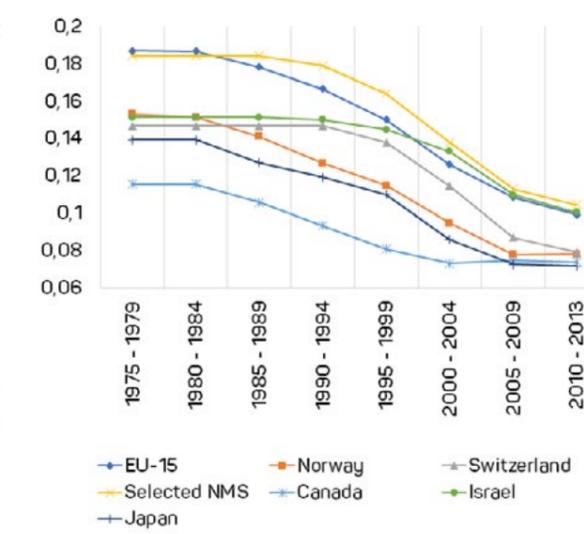


Figure 4: Regulatory Impact Index of selected economies in 1975 – 2013. Source: OECD, authors' calculations

A significant divergence can be seen at the beginning of the observed period. Late 1970s and early 1980s can be characterized as decades of structural deficiencies, economic crises and spill-over impacts. The following period of late 1980s and 1990s was a period of political changes and economic liberalization shaped by WTO's most influential round of trade liberalization negotiations between 1986 and 1994 – the Uruguay Round. Similar pace of deregulation between the Old and the New Member States<sup>10</sup> may seem obvious, but it is lagging behind other developed economies and non-EU members of the European Economic Area.

<sup>10</sup> OECD's Regulatory Impact Index only includes data on Slovakia, Hungary, Poland, Estonia, Slovenia and the Czech Republic from the New Member States.

Product Market Regulation Indicator

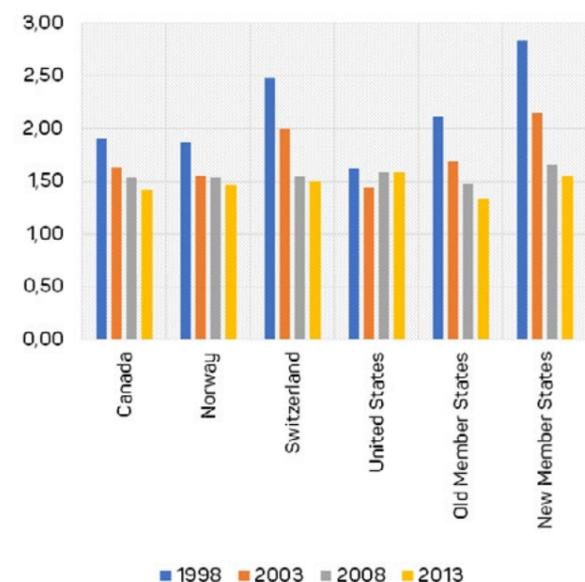


Figure 5: Product Market Regulation Indicator in selected countries. Source: OECD

In addition to RI Index, OECD's Product Market Regulation (PMR) Indicator<sup>11</sup> measures the degree to which policies promote or inhibit competition in areas of the product market where competition is viable. There are signs of convergence towards a similar level of market regulation in the advanced economies. In general, the New Member States have improved its PRM score by 1.3 points between 1998 and 2013, with the pace of liberalization faster in the first half of the observed period. This is due to pre-condition of their EU membership – consistency with the EU acquis. PMR Indicator does not show any major differences between the levels of regulatory burden amongst the EU and other developed economies.

Product Market Regulation Indicator (2013)

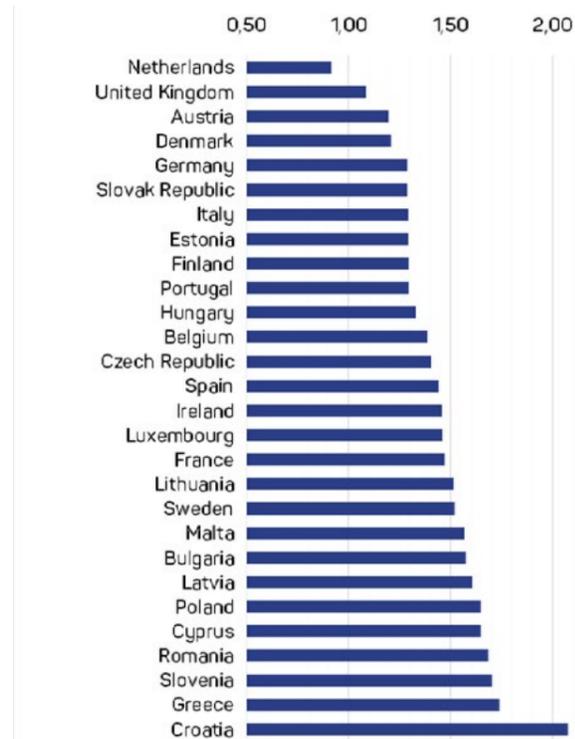


Figure 6: Product Market Regulation Indicator (2013). Source: OECD

Disparities can be found also amongst Member States. Although New Member States tend to perform weaker in PMR, Slovakia and Estonia outperformed majority of the Old Member States. On the other hand, Greece scored poorly despite its attempts to reduce the number of restrictions in services sector (as mentioned above), which demonstrates its long-term highly regulated product market.

The disparities can be recognized on the economy-wide level, but they are even more pronounced on the sector level. Excessive regulation in non-manufacturing sectors hinders further liberalization of the ESM. OECD's Sector Regulation Indicators<sup>12</sup> measure regulation at the sector level in seven network sectors and five services sectors<sup>13</sup>. To examine the trends of sector regulation in the EU, analysis of network regulation, retail trade and professional services indicators was conducted.

Network regulation is often mentioned as one of the root causes of lower levels of liberalization of services sector in the EU. The discrepancies between Member States remain relatively high, network industry liberalization remains uneven due to protectionist policies of Member States. There is a divergence between the levels of network industry regulation among the Member States.

<sup>11</sup> PMR is a comprehensive and internationally-comparable set of indicators that measure the degree to which policies promote or inhibit competition in areas of the product market where competition is viable. They measure the economy-wide regulatory and market environments in 35 OECD countries in 1998, 2003, 2008 and 2013 and in another set of non-OECD countries.

<sup>12</sup> The indicator varies on the scale between 0 and 6, where zero represents a perfectly liberalized market and six a perfectly closed market.

<sup>13</sup> These include seven network sectors (telecoms, electricity, gas, post, rail, air passenger transport, and road freight) and five services sectors (retail distribution, accounting services, legal services, engineering services, and architectural services).

The United Kingdom reports the lowest regulatory burden in the EU, with the values significantly below OECD average. Germany also scores well, although it is lagging the UK by 0.5 points. France and Slovenia lie on the other side of the spectrum, both well above both OECD and EU average, the former improving between 1998 and 2013 by 1.93 points, the latter by 2.59 points.

Network Industry Regulation Indicator

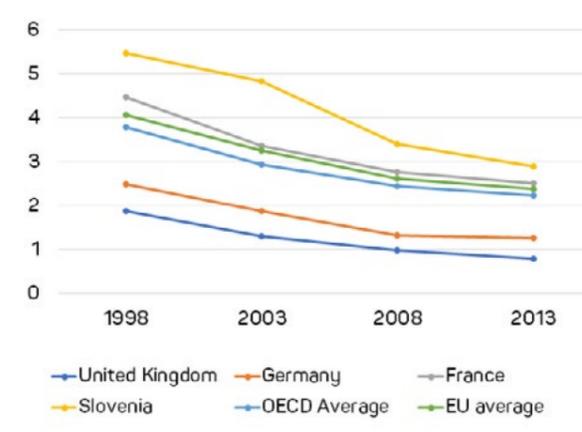


Figure 7: Network Industry Regulation Indicator. Source: OECD

Finally, the difference between the Member States is persistent also in professional services. There are around 800 regulated professions across the EU, out of which approximately one quarter is regulated in only one Member State (Booth, Persson & Ruparel, 2013). Despite EU-level attempt to facilitate the free movement of services by setting common rules for the recognition of professional qualifications within its Recognition of Professional Qualifications Directive, national differences continue to hamper the free movement of services across borders.

Sector Regulation Indicator<sup>14</sup> focuses on regulatory burdens on professional services, namely accounting, legal professions, architecture and engineering. The divergence between different regulatory regimes within the EU is apparent. Regulation in professional services varies from very strictly regulated markets, such as Croatia, Luxembourg and Poland, to relatively deregulated markets, such as Nordic countries or the UK.

<sup>14</sup> Indicator's value ranges from 0 (no regulation) to 6 (highest possible regulation).

Professional Services Regulation Indicator (2013)

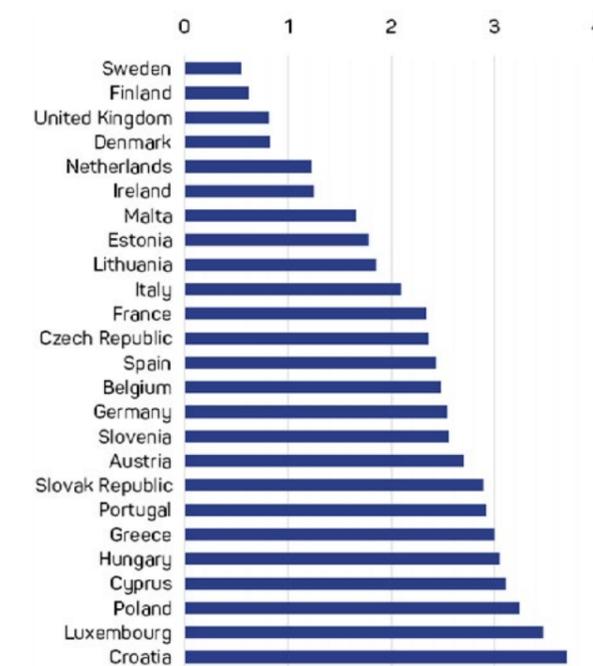


Figure 8: Professional Services Regulation Indicator. Source: OECD

If we look closely on the levels of regulation in the four professional fields, there is a pattern to be identified. In accounting, Poland, Belgium and Luxembourg are the most strictly regulated markets, whereas Denmark, Lithuania, Bulgaria and Ireland have reached very low level of regulation. In legal services, Croatia is an absolute outlier (5.08), followed by Hungary, Greece and Belgium. Least regulated markets of legal services are in Sweden, Finland, the UK and Denmark. In architecture, Croatia, Luxembourg, France and Portugal reported the highest scores, whereas Netherlands, Finland and Sweden are absolutely deregulated (scoring 0) and Denmark and Ireland reported only a minor regulation (0.19). In engineering, the regulation is strongest in Croatia, Luxembourg and Cyprus, whilst Sweden, Finland, the Netherlands, Denmark, the UK, Belgium and France are absolutely deregulated (scoring 0). The regulation remains high in traditionally more protectionist markets of Southern Europe, while Scandinavian countries report a low level of restrictions in the analysed areas.

The extent to which the single market has been able to push for convergence in key areas of product market regulation, services sector, network industries and professional services remains limited. The evidence for such claim can be found not only in transposition deficit, but also in continuing differences in the level of openness of EU Member States.

## HOW TO CREATE SINGLE MARKET FIT FOR 21ST CENTURY?

### Completing the ESM

#### Thorough revision of ESM's current regulatory regime

The argument of unfinished or malfunctioning regulation that creates a system of partial liberalization has been developed throughout the article. The current practice of piecemeal approach to reform, as with the GMO regulation, and unfinished or inconsistent regulation of some areas, such as with consumer protection rules, adds up layers of regulation to the already existing ones at the national level. Moreover, regulation that disproportionately places burdens on SMEs, as shown with the REACH and GDPR cases, supports the flourishing of costly and overly complex regulation that discriminates SMEs. However, it is fair to note that it is often the Council and the EP that are not always 'geared to Better Regulation principles' (Pelkmans, 2016), as they represent national interests rather than the EU ones. Often the original Commission proposal and the final version of legislation differ significantly, as it was with the Services Directive, thus lowering the expected benefits and effects of adopted legislation.

An obvious solution would be a revision of the EU regulatory framework as a whole. Commission tried to address the issue through its Regulatory Fitness and Performance Programme (REFIT) launched in 2012 with the aim of making the EU law fit for purpose through removing red tape and lowering costs without hampering the policy objectives. In 2015, Better Regulation Guidelines were adopted, Impact Assessment and Evaluation were fully integrated in the Policy Cycle and REFIT was transformed into a stakeholder-driven programme to improve existing EU legislation.

REFIT works on the basis of the systematic evaluation of the performance of existing EU legislation. Since 2012, two major screenings of EU regulatory framework have identified the main areas for evaluation and 200 initiatives for burden reduction and simplification have been launched. In 2015 and 2016, 119 REFIT actions were included in the Juncker Commission's Work Programmes and 90 proposals were withdrawn after the notice (European Commission, 2016). An example of REFIT actions includes opinion on centrepiece of Services Directive - Points of Single Contact. The Commission decided to address the recommendation in a proposal on the Single Digital Gateway. Another REFIT action in the area of European Venture Capital and Social Entrepreneurship Funds led to modification of rules that unblocks flow of capital and allows for more incentives for investment in this field than in the original version of the legislation (European Commission, 2016).

These initiatives are a step in the right way, although

their scale remains rather limited<sup>15</sup>. There is a clear need for revision of the existing regulatory framework in order to distinguish the beneficial regulatory principles from the ones that hamper growth potential and innovation, especially for SMEs. Therefore, the activities under REFIT should be scaled up to revisit the key areas of regulation and to collect feedback from the main stakeholders. Regulation revision on a larger scale may help the ESM to free itself of the malfunctioning, ill-defined or redundant regulation that hampers business environment in the EU.

#### Impact on innovation should be put at the core of EU's regulatory attempts

Similar to the analogy with the transformation of the EMU in the wake of financial crisis, the ESM also needs a major redesign. As with the EMU, the ESM's first remedy is the revision of current body of legislation as a resolution to the existing problem. That, however, must be accompanied also by introducing a better functioning preventive arm, which the authors see in thorough ex-ante impact assessment of the proposals.

As shown in the examples of EU legislation 'gone wrong', regulation can have disproportionate impact on businesses based on their size, field or residence. This implicit discrimination should, however, not occur within the ESM, or at least, the impact should be comparable for small and large enterprises. Commission has already introduced an 'SME test' - impact assessment practice that encourages policymakers to 'think small first'. However, according to Scale up Europe report (2016), only 11 out of 28 Member States routinely apply SME test<sup>16</sup>. More innovation-driven legislative acts, together with rigorous testing of proposals through SME tests, could create a more innovation-friendly environment for small companies, start-ups and scale ups.

Regulation should, naturally, be a response to market failure, not an obstacle to market creation. New areas, such as sharing economy or fast-developing digital technologies, such as blockchain, should only be subject to moderate regulation once their market has matured to identify risks as a basis for regulation. An example of successful policy tool to allow innovation to flourish was the use of regulatory sandbox in the UK to foster innovation in the financial services market. The UK's Financial Conduct Authority (FCA) will allow unauthorised firms to obtain restricted authorisation to test innovative products or services in a live environment, thus making way for initial phases of innovation without major administrative obstacles (Trillmich & Jokic, 2016).

<sup>15</sup> The EU adopted 1420 basic legislative acts and 633 amendments to the existing acts in 2016. REFIT only managed to touch upon a fraction of these.

<sup>16</sup> These countries are Austria, Belgium, Denmark, Estonia, France, Germany, Greece, the Netherlands, Romania, Sweden and the UK.

#### Complete the single market in services through taking a holistic approach

Services directive should be fully implemented, with widening the scope of services liberalization to telecommunications, transport, network industries and postal services. These sectors are closely related to smooth functioning of digital economy not liberalizing them will hamper future functioning digital single market. Moreover, completing single market in services is also necessary condition of applying the same rules on the offline and online world.

Other artificial barriers to trade should be abandoned, especially in the fields with strong state presence – services of general interest and network industries, such as transport, postal services and healthcare. Erixon and Georgieva (2016) offer a convincing argument for market opening in public healthcare. Thanks to a growing pace of progress in medical technologies, there has been a major improvement in the public healthcare in some countries. However, not all EU countries are able to keep up the pace of innovation and development in modern fields of medicine. Liberalization could bring economies of scale thanks to tradability of some services and higher specialization of some countries.

#### Complete liberalisation of network industries

As in the case of services liberalization, network industries should be liberalized to enable the technological developments to increase efficiency of these industries. This will require a high level of commitment from the Member States that have been so far rather reluctant towards liberalizing these industries. Needless to say, technological development in new areas such as e-communications can bring about significant gains from spill-over effects in traditional industry. A good example can be the use of broadband in smart cities, smart homes and smart industries.

### Creating the Digital Single Market (DSM) as a way forward

Europe's digital economy faces a similar challenge as the services sector. The regulatory framework varies across the EU and there is little streamlining with other strategies and existing policies. Many legal barriers to the digital single market in Europe remain in place, especially in areas such as data protection, e-privacy, copyright, or e-commerce. Through the creation of Digital Single Market, Europe can gain a wide range of economic, social and environmental benefits. It can also boost long-term growth rates and competitiveness which may be especially important for the economies of Central and Eastern Europe as it could provide access to a large market in fields and sectors where these countries could potentially develop their competitive advantage.

It is important to keep in mind the need to increase productivity, which is lagging behind the US and other global incumbents, which can be enabled by wider use of digitalisation. However, digital tools can be fully utilised only when there are no national silos in place, such as the requirement of national localisation of business data (for example MS national legislation in Sweden or Germany). Free flow of data has significant economic benefits with a price tag of 111 billion EUR by 2020 (Cataneo, et al, 2016).

The current framework of the Digital Single Market Strategy (DSMS) has received some very contradictory comments from consumers and businesses. Consumer reaction was rather positive, as DSMS has been driven from the consumer perspective, calling on security and protection. The strategy should address the necessity of dismantling national non-digital barriers to growth and facilitate the adoption of ICT-solutions to all sectors of the economy, especially for services, encourage new business formation and create digital champions that will rejuvenate the EU economy.

Europe does not exist in vacuum and it needs to consider rapid developments, as digitalisation knows no borders. Businesses and innovation can easily move from one continent to another to fully develop ideas and opportunities. Looking at the perspective of member states, those in the unofficial group of like-minded Member States Digital-9<sup>17</sup> can lead by example with putting the business, investment and innovation in the forefront of making digital-positive policy and reaping its benefits. As Enderlein, Dittrich and Rinaldi (2017) suggest, a strong inter-governmental pro-innovation coalition between France and Germany can lead to building a joint digital ecosystem. Significant impact will be only achieved if the Member States realise the need to unite and act on these policies together.

Putting innovation and entrepreneurship as one of the first priorities of such an important economic policy should be one of the primary goals of the revision of the Digital Single Market Strategy. As mentioned in this paper, digitalisation and productivity are key to improve the European economy and set it back on track in the global competition.

#### Startup and Innovation Economic Policy

The difference between companies in the EU and the US comes down to the phase of scaling. EU's should concentrate on the support of high-growth firms that may generate significant social and economic benefits. One company that grows to 100 employees in five years can better serve its stakeholders (employees, shareholders, and government) than 50 stagnating ones. Based on the findings of Coutu (2014), the importance of

<sup>17</sup> Digital-9 is a group of 9 countries that formed an unofficial alliance that sprung from Joint Open Letter to the European Commission from the United Kingdom, the Czech Republic, Poland, Luxembourg, Finland, Sweden, Denmark, Estonia, Latvia, Lithuania and Bulgaria to Vice President Ansip, on the topic of digital platforms. Bulgaria and the Czech Republic are not part of the Digital-9 Group.

fast-growing firms in the UK is significant. In her study on scale-ups in the UK, she estimates that through closing the scale-up gap the companies can generate £38 billion additional turnover and create 238 000 jobs in just three years.

The goal of DSMS should be to remove the unnecessary fragmentation that is hurting Europe economically and allow for building the 'borderless sectors', mostly within the service sectors with large network effects and a high likelihood of disruption by new digital business models with a common legislation, a common regulatory rulebook and even a common regulator (Enderlein & Pisani-Ferry, 2014). Europe should concentrate on regulatory convergence across as many sectors as possible to open fragmented European markets to support the fast growth of new and agile digital competitors in these sectors who challenge old business models with innovative digital solutions. Policies should facilitate scaling of European businesses and accelerate ICT-led, productivity-enhancing growth.

The nature of the digital transformation that applies across all sectors of the economy should encourage horizontal approach to policy review. Regulatory convergence should alleviate bureaucratic requirements (plus translation costs), render the expansion to other European markets painfully slow and unnecessarily expensive, especially for smaller businesses. Legal fees to comply with the local regulations were estimated at €9,000 per country. Under this logic, e-Commerce retailer might face a total of €243,000 additional costs for lawyers and accountants only to be present in all 'foreign' European markets<sup>18</sup>.

A challenge for policy makers comes with the new, dynamic and emerging fields that change boundaries between industries. This calls for the new approach in regulation that requires closer cooperation between the industry (starting even with the fast-growing smaller firms) and regulators, where the regulator is directly involved in advancing innovation as a tool to promote competition. Good example comes from the UK's Financial Conduct Authority that use regulatory sandboxes that allow new entrants to test out their products, and the potential regulatory implications, in a close dialogue with policy makers.

This has been one of the factors that have allowed the alternative finance sector to grow – with crowdfunding, peer to peer and other tools, each of which posed challenges for regulators. Governments can use 'government accelerators' to bring in innovative companies to work on public issues, such as traffic congestion, air pollution, as it was in The United Arab Emirates). They can also test out new technologies in the field of Internet of Things, as in South Korea, or open up a discussion on new trends – as the US' National Highway Traffic Safety Administration which developed policies

<sup>18</sup> This estimation was presented by House of Lords Committee on the European Union Internal Market Sub-Committee Inquiry on Online Platforms and the Digital Single Market (House of Lords, 2016).

on autonomous vehicles in 2013 – to pre-empt their widespread introduction – and worked with industry to better understand how driverless cars and driven cars would interact.<sup>19</sup> The horizontal cross-sectoral approach is necessary to adapt and iterate regulation, based on data and engagement with larger pool of innovative companies, to promote self-regulation and safe testing, as well as understanding of technologies and business models by policy makers.

### E-commerce - one of the drivers of the EU economy

European consumers are rather hesitant when it comes to intra-EU digital market. Based on the Commission data, only 4% of Europeans buy products cross-border (Brotman, 2016). One of the key pillars of the Digital Single Market Strategy is a breaking of barriers and ensuring seamless access to B2C (business to customer) market across the EU. Barriers standing in the way should be addressed through harmonization of VAT and its simplification with transparent and simple rules in one clearing house<sup>20</sup>, harmonization of consumer protection rules, better enforcement of consumer rights, liberalization of postal services, and end of "unjustified" geo-blocking and future-proof copyright reform fit for the digital age enabling innovation, research and education<sup>21</sup>.

A Telecoms Single Market will certainly lead to more competition and thus more investment in productivity enhancements but the plans do not include substantial change. What is particularly missing is an idea of combining rules aiming at service-based competition with rules promoting facility-based competition. Such change could restore the incentives of the private sector to invest in infrastructure and NGA technologies; an approach which proved to be efficient in supplying large swaths of territory and population in the US with ultra-fast internet connections (Enderlein, Dittrich and Rinaldi, 2017).

Net neutrality is one of the backbones of data transfers and gives young, innovative companies democratic access to fast connection to design and deliver their products and compete with incumbents based on its quality not on the ability to afford a faster internet connection.

Finally, free flow of data is one of the key elements of well-functioning digital single market. Data protection policies vary across the EU28, with Germany having particularly stringent data protection laws which hamper attempts by the European Commission to reduce regulatory barriers to the free flow of data between Member States. ECIPE Study shows that data localisation requirements

<sup>19</sup> For more information on this matter, see NESTA blog <http://www.nesta.org.uk/blog/anticipatory-regulation-how-can-regulators-keep-fast-changing-industries>

<sup>20</sup> For more detailed explanation, see Scale Up Europe (2016).

<sup>21</sup> Solution could lie in a broad copyright exception for text and data mining, covering commercial and non-commercial activities, revoking ancillary copyright rules for press publishers, filtering and licensing of user generated content. For more, see Innovators Act ([www.innovatorsact.eu](http://www.innovatorsact.eu)).

and other barriers can cut GDP growth by more than 1% in some countries (Bauer et al, 2016).

### Education for the 21st century

The newest data shows that by 2020 the EU will lack over 500,000 ICT professionals<sup>22</sup>. Digital transformation is one of the greatest drivers of innovation in the education sector and a way to open lifelong learning opportunities to a wider pool of citizens and employees. A clear example of how digital technology can be complementary to traditional education can be found in MOOC (massive open online courses) courses, that open tremendous opportunities for educating with low costs and should be considered a core part of the educational system, especially in remote areas.

Executive education for the fast-growing companies can solve the shortage of skills necessary to face the strategic and operational challenges of scaling up, such as capital requirements, supply chain, market access and digital management. Business education needs to focus on the unique skills emerging from and needed in the digital economy.

Education system should encompass ICT and entrepreneurial skills as a part of each student's curriculum. There are many examples of carefully designed and engaging game-like programs that introduce students to basic concepts of entrepreneurship without inducing them to a culture of extreme competition. Digital skills and competences should range from design thinking and content creation to communication and managing personal data. Experience in the real-life environment should be a necessary part of education process, with education institution ensuring closer contact between students and companies.

### Access to Capital

Growth financing fuels innovative ideas. However, 90% of all European venture capital is found in just eight EU members states (Denmark, Finland, France, Germany, the Netherlands, Spain, Sweden and the United Kingdom), and most of the funds that do exist are fractured along national lines (European Commission, 2015b). The European Commission presented its Capital Markets Union (CMU) proposal in 2015. It set out 33 measures – ranging from stock-market reform to insolvency legislation. Few steps would be more fruitful for scaling up businesses than completing the CMU which would open a pan-European market for capital. Tax and other fiscal incentives can encourage angel investors. For example, Belgium offers a tax reduction of 45% for investment in new shares of a start-up (or micro-company) and 30% for investments in new shares of an SME or a start-up fund (BAE, 2015). The

<sup>22</sup> This estimate was presented by on a European Conference on "High-Tech and Leadership Skills for Europe" – Brussels, 26th January 2017 by Tobias Husing and Eriona Dashja from empirica. Presentation available here: [http://leadership2017.eu/fileadmin/scale\\_conference/documents/husing\\_20170126.pdf](http://leadership2017.eu/fileadmin/scale_conference/documents/husing_20170126.pdf).

European IPO market should be made more accessible to promising, high-growth firms by creating focused growth markets on existing stock exchanges. Allowing use of alternative sources of financing such as crowdfunding and crowd investment would release additional capital to the economy, as in case of Finland, Europe's best practice example.

### Business Models and Workforce

Tackling the big demographic challenge of Europe will lead to the need to liberalise the labour market. On one hand, to simplify the hiring of employees by offering flexible contracts, and on the other, to reflect changes in the job market and embrace them through hiring globally, mainly skilled non-EU workers and adopting remote work practice.

Opening to the new business models and embracing entrepreneurship and allowing for failure<sup>23</sup> are one of the best ways to innovate and create value for the economy. Use of regulatory sandboxes and sunset legislation, such as the Danish Startup Visa<sup>24</sup> will allow for testing, monitoring and adjustment of the new rules allowing the market to mature without hampering its growth.

Strong European industries and corporations can become partners and investors in the new innovative companies. Policymakers can incentivise this cooperation via financial tools, such as providing grants or matching funding in Corporate Venture Capital funds.

### Digital Government

Innovation would not be possible without a public partner that is ready to embrace the change. Digitally-enabled government will encourage and help businesses to flourish with streamlined, clear rules following principles of once-only and digital by default. These may act as advantages to start a business in the EU. Open data also provide an opportunity to new innovative business models built on publicly available data.

### Digital Diplomacy

Global nature of the Internet and technologies calls for diplomatic relations among nations, governments and private sector. Cyber-attacks are becoming part of everyday life with 74% of world's businesses expecting to be hacked in 2016 (ISACA, 2017). Proactive solutions on the governmental level might prepare ground rules and commitment for governments to protect civilians from digital attacks, such as a Digital Geneva Convention proposed by Microsoft's Brad Smith in February 2017<sup>25</sup>.

<sup>23</sup> Allowing for failure is understood as removing national legislation that punishes entrepreneurs for failing. The Commission issued "insolvency recommendation" that aims at establishing minimum standards for preventive restructuring procedures, enabling debtors in financial difficulty to restructure at an early stage with the objective of avoiding insolvency.

<sup>24</sup> For more information on Denmark's start up visa policy, see <http://www.startupdenmark.info/>

<sup>25</sup> To read the full keynote address, see Transcript of Keynote

Security in the cyberspace and safety of data are crucial for the growth in digital technologies, which might be hampered by attacks, crime and misuse. The Commission should actively participate in multi stakeholder platforms such as the UN's Internet Governance Forum. Digital diplomacy on a supranational level provides a solid ground for creating safe and functioning digital economy.

## CONCLUSION

Innovation has grown in an incredible pace and it is clear now that legislation and policy lacks effective tools to catch up. The disruption that comes with latest technologies is changing lives, businesses and governments. The way forward as we see it in this paper is to courageously embrace change, use it as an opportunity, not a threat, experiment and find its added value. Protectionism will only lead to slowing down progress and lagging.

The way forward is to keep the legislation dynamic and fit for purpose. The goal should be building the 'European dream' through solid ground for innovation with business-friendly regulation. The Commission should not seek to regulate if there is no market failure in dynamically evolving industries, but only after thorough examination of existing rules under the premise of policy relevance in the age of digitalisation. It is also important to upgrade official government coordination and to liberalise rules in the labour market, increase service availability across borders, simplify tax rules with the "digital-positive" mindset. Security should not be the excuse to increase legislative burden on non-sensitive data allowing free data flows and development of the full potential of data economy in the EU.

Address at the RSA Conference 2017 "The Need for a Digital Geneva Convention", available here: <https://mscorpmedia.azureedge.net/mscorpmedia/2017/03/Transcript-of-Brad-Smiths-Keynote-Address-at-the-RSA-Conference-2017.pdf>.

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