

ceplnput Special

Europe in the Run up to the Election: Agenda 2024-2029

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The Next Step for the Single Market: A Geo-economic Shelter

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The EU is in a geopolitical competition with China and the US, the aim of which is to gain economic strength and technological leadership in order to increase geopolitical power. Both countries are trying by all means available to conquer strategically important supply chains and achieve technological leadership at the expense of the rest of the world. This jeopardises the EU's geopolitical power and its industrial base. We therefore propose giving the single market a further protective purpose: protection against geo-economic threats. This is not a break with the system but an extension of it as the single market already fulfils numerous protective purposes, e.g. consumer and environmental protection. To transform the single market into a geo-economic shelter the EU must support European companies in dealing with three geo-economic challenges:

- ▶ **Protection against supply (chain) disruptions:** To this end, it is necessary to reduce the EU's one-sided dependence on critical resources, such as energy supply and raw materials, which are important for the digital and green transition and for defence. One way of doing this is to conclude further trade agreements.
- ▶ **Protection against economic coercion by third countries:** The EU has already developed several instruments and strategies to protect its member states and companies from external economic coercion. The next EU Commission must apply the existing measures consistently without creating legal uncertainty.
- ▶ **Protection against distortions of competition due to third-country subsidies:** Third-country subsidies jeopardise the EU's industrial base and impede its technological sovereignty. They are therefore of geopolitical importance and, in many cases, are deliberately used by third countries to gain geopolitical advantage, for example by operating critical infrastructure in the EU.

To provide this triple protection it is necessary to transform the single market into a technologically innovative and entrepreneurially free market. The new EU Commission must therefore (1) create a simplified, understandable, predictable and more coherent regulatory environment, (2) support uniform transposition,

Preamble

Europe is facing a time of historical upheaval, a time of internal and external threats to peace and freedom, with great opportunities as well as risks from new technologies, and a time beset by the consequences of climate change and its impact on prosperity and justice. Today's Europe is the result of its eventful history, its experiences and the lessons it has learned from its scientific and cultural achievements, from its civilisational accomplishments, as well as from war, suffering and crisis. The legacy of the past has also given us a promise for the future: human dignity and freedom are inviolable. Today – in the face of major upheavals that will decide the fate and future of Europe – the question once again arises as to what solutions Europe can find to the troubles of the present and the challenges of the future. Can it preserve peace and freedom, defend its sovereignty and security, and increase prosperity and justice?

With this series of articles, the cep Network would like to draw attention to pressing issues and developments which go beyond day-to-day politics and regulation and will be of crucial importance for the EU in the run-up to a significant and game-changing European election. We aim to ask the key questions, shed light on their strategic context and provide some political answers.

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1 The Single Market: The EU's greatest asset!

The EU single market as an "area without internal borders" has officially existed since 1 January 1993, celebrating its 30th anniversary in 2023. A key role in its development was played by former President of the EU Commission Jacques Delors, who developed a comprehensive reform programme at the end of the 1980s involving amendments to the EC Treaty that were adopted by the Single European Act. Since then, the EU single market, consisting of the four fundamental freedoms – free movement of goods, services, people and capital – has been the centrepiece of the EU. It comprises the 27 EU Member States as well as Norway, Iceland and Liechtenstein who are members of the European Economic Area (EEA). Parts of the single market also apply to Switzerland.¹ The EU single market is therefore one of the largest integrated markets in the world.

The single market was created to increase the prosperity of people in the EU. To this end, the four fundamental freedoms have been supplemented by a set of rules that protect consumers, companies and the environment in a variety of ways, while promoting economic growth and social progress. The most important protective purposes of the single market are as follows:

- **Protection of competition:** European competition law ensures that companies cannot charge excessive prices through cartels or the abuse of dominant market positions.
- **Consumer protection:** The EU has many provisions in place to protect consumers, such as product safety legislation, consumer rights when making purchases in the single market, and product liability rules.
- **Environmental protection:** The single market has numerous laws to protect the environment. These include limits on the emission of pollutants, recycling requirements and the promotion of renewable energies.
- **Social protection:** There are EU-wide provisions that guarantee minimum standards for working hours and health and safety in the workplace. These provisions help to protect the health and rights of employees.
- **Data protection:** Strict data protection standards apply in the single market, which are laid down most notably in the General Data Protection Regulation (GDPR). These standards protect citizens' privacy and give them control over their own data.

The EU is currently facing a major new challenge due to changes in the geopolitical situation. The EU is in a geopolitical competition with China and the US, the aim of which is to gain economic strength and technological leadership in order to increase geopolitical power. Both countries "are no longer playing by the rules and are actively pursuing policies to enhance their competitive positions."² Both countries are trying by all means available to conquer strategically important supply chains and achieve technological leadership at the expense of the rest of the world. This new reality jeopardises sovereignty, prosperity and democracy in the EU.³

¹ European Council (2023): 30th anniversary of the EU single market, available at

<https://www.consilium.europa.eu/de/infographics/30-years-of-the-eu-single-market/>.

² Speech from Mario Draghi at the conference on European social rights in La Hulpe, Belgium.

³ See: Vöpel H. (2024): Freedom or Serfdom - Fateful Years ahead for Europe; Why the EU must change its self-image and regain sovereignty for the geopolitical turning point; cepInput special: Europe before the election: Agenda 2024-2029; available at <https://www.cep.eu/en/eu-topics/details/cep/freiheit-oder-knechtschaft-europa-vor-schicksalsjahren-cepinput-spezial.html>.

These geopolitical changes are already having a major economic impact on the EU and the single market. The EU's industrial production in February 2024 was 5.4% lower than in the same month last year. By contrast, China's industrial production in the first quarter 2024 was 6.1% higher than in the same period in 2023.⁴ The interdependence of international trade, technological leadership and geopolitics will continue to increase which means that the EU must have both reactive and forward-looking policy instruments to protect its interests in a complex global environment. The single market must therefore be equipped with these instruments so that it can protect citizens and businesses - as far as possible - from the negative effects of the changing geopolitical situation. We therefore propose giving the single market a further protective purpose: protection against geo-economic threats.

Protection against geo-economic threats differs from the other protective purposes in that it is only directed outwards whereas the other protective purposes are directed both inwards and outwards. It should already be mentioned here that the transformation of the single market into a geo-economic shelter does not release companies from their duty to manage geo-economic risks. After all, dealing with risks is first and foremost an entrepreneurial task. However, the single market as a geo-economic shelter can support companies in this regard.

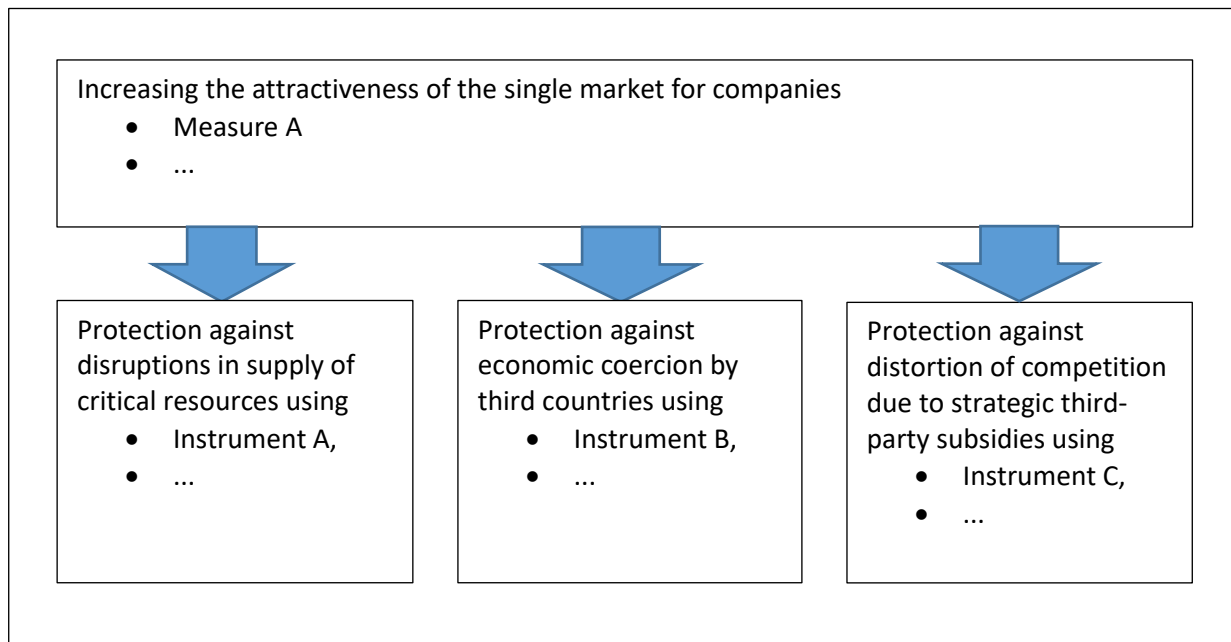
2 The agenda for the next five years

To address the aforementioned problems and challenges, the new EU Commission must transform the single market into a geo-economic shelter. In concrete terms, this means

- Protection against supply chain disruptions for critical resources,
- Protection against economic coercion by third countries and
- Protection against distortions of competition due to strategic third-party subsidies.

To provide this triple protection, economic strengthening of the single market is essential. The stronger the single market, the better it can contribute to solving the geo-economic challenges, for example because the conclusion of trade agreements with the EU and the adoption of European standards becomes more attractive for third countries. The fundamental structures of the single market, i.e. the four fundamental freedoms, do not need to be touched. On the contrary: the four fundamental freedoms must be implemented consistently so that the single market can realise its full potential.

⁴ Euractiv (2024): Draghi: EU must enact 'radical change' as US and China refuse to 'play by the rules', available at <https://www.euractiv.com/section/economy-jobs/news/draghi-eu-must-enact-radical-change-as-us-and-china-refuse-to-play-by-the-rules/>.

Fig. 1: The single market as a geo-economic shelter

Source: Own presentation.

If we compare the EU single market with the world's two other large internal markets – the US and China – the comparison suggests that there is untapped potential in the EU single market (see Table 1). Although the US has significantly fewer inhabitants than the EU single market, it produces significantly more goods and services. There are many reasons for this. For example, there are greater cultural and historical differences between the EU Member States than between the US states. Nevertheless, the US shows what would be possible if the single market were to realise its full potential. It is particularly problematic that GDP growth in the EU single market is also lower than in the US. Instead of catching up with the US, the single market and therefore the EU is falling behind. This is consistent with the fact that the EU has lost ground as a production location for many high-tech products, and the competitiveness of European companies is being eroded.

Tab. 1: The EU single market compared to the US and China

| | Population (in mill.) | GDP (in bill. Euro) | GDP per inhabitant (in euro) | Average GDP growth 2013-2022 (in per cent) |
|-------------------------|-----------------------|---------------------|------------------------------|--|
| EU single market | 455 | 17 | 38,267 | 1.6* |
| US | 340 | 25 | 73,529 | 2.1 |
| China | 1,400 | 16 | 11,429 | 6.2 |

Source: Own calculations based on Eurostat, Destatis, Statista and the Austrian Federal Economic Chamber.

* Instead of the average GDP growth of the EU single market the average GDP growth of the EU is shown here.

The problems of the single market are also reflected in company surveys. The vast majority of companies benefit from the EU and its single market, and 64% of companies operating abroad even derive great benefit from access to the single market.⁵ However, companies believe that the EU is

⁵ IHK Business Barometer on the 2024 EU elections, pp. 3, 7, available at <https://www.dihk.de/resource/blob/115120/135f9aad51341d6fc0a0115e267203da/ihk-unternehmensbarometer-eu-wahl-2024-eng-data.pdf>.

becoming increasingly less attractive as a business location. According to more than half (56%) of companies across all sectors, and even two-thirds (66%) of industrial companies, the EU's competitiveness as a business location has declined over the past five years.⁶ One problem that is repeatedly voiced is the high bureaucratic burden on companies.

Several reports on the future of the single market have recently been published, notably the comprehensive report written by Enrico Letta⁷, the former Italian Prime Minister, and the 10-point plan to revive and deepen the single market written by Jacques Pelkmans.⁸ In the coming weeks, Mario Draghi will also publish his report on the future of European competitiveness, certain details of which he outlined in a recent speech.⁹

These reports contain many good proposals for improving and deepening the single market but differ from this ceplnput in two respects. Firstly, the ceplnput is more conceptual in nature, in that it proposes transforming the single market into a geo-economic shelter. Secondly, our proposals for improving the single market are more focussed on the efficient and effective implementation, application and consolidation of existing EU law. This is an often-overlooked way to improve the business environment, and would also be easier to implement than comprehensive new EU legislation. At the same time, the highly constructive proposals put forward in the other reports would certainly be of support in a transformation of the single market into a geo-economic shelter.

The following chapter sets out what the new EU Commission must do to transform the single market into a geo-economic shelter.

3 The single market as a geo-economic shelter

The past few years have been characterised by rapid global changes and escalating geopolitical tensions. These include, in particular, Russia's attack on Ukraine, the attacks by Iran-backed Houthi rebels on container ships in the Red Sea and Iran's attack on Israel. In addition, the US is politically divided into two opposing, irreconcilable political blocs and is no longer a reliable partner for the EU. In terms of foreign policy, the US is threatened by the growing strength of China, which is increasingly expanding its sphere of influence, particularly in the Indo-Pacific. The resulting tensions between the two superpowers are becoming ever more apparent. As a result, the world is splitting into two parts. One part is trying to hold on to the rules-based, multilateral world order of the post-war period dominated by the US. The other part rejects this world order. The political division of the world is illustrated by the attitude to Russia: two-thirds of the world's population live in states that have adopted a neutral or Russia-friendly policy despite Russia's violation of the basic principles of international law.¹⁰

Furthermore, the EU is in a geopolitical competition with China and the US, the aim of which is to gain economic strength and technological leadership in order to expand geopolitical power. Instead of

⁶ IHK Business Barometer on the 2024 EU elections, p. 3, 7, available at <https://www.dihk.de/resource/blob/115120/135f9aad51341d6fc0a0115e267203da/ihk-unternehmensbarometer-eu-wahl-2024-eng-data.pdf>.

⁷ Letta, E., Much more than a Market, April 2024, available at <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>.

⁸ Pelkman, J., Empowering the Single Market, A 10-point plan to revive and deepen it, 30 January 2024, available at <https://www.ceps.eu/ceps-publications/empowering-the-single-market/>.

⁹ <https://geopolitique.eu/en/2024/04/16/radical-change-is-what-is-needed/>.

¹⁰ Economist Intelligence (2022): Russia can count on support from many developing countries, available at <https://www.eiu.com/n/russia-can-count-on-support-from-many-developing-countries/>.

playing by the rules, both countries try by all means available to conquer strategically important supply chains and achieve technological leadership at the expense of the rest of the world. This jeopardises the EU's geopolitical power and its industrial base.

The changing geopolitical situation means that the supply chains of European companies can quickly be disrupted, as happened in the case of Russia. Supply chains to the US and China, the EU's two main trading partners, have also come under repeated pressure in recent years as a result of political decisions to the detriment of European companies. For example, Donald Trump imposed tariffs on steel and aluminium imports from the EU during his first presidency. And under President Biden, supply chains were strained due to stricter Buy American rules. The US has also introduced harsh restrictions on the export of technologies classified as national security relevant which particularly affects products and technologies related to telecommunications and advanced semiconductors. These restrictions also affect European companies that are active in these supply chains.

China has also taken measures in recent years that have distorted the supply chains of European companies, for example, by introducing various tariffs and export controls, particularly on critical raw materials such as rare earths. These controls directly affect the supply chains of many European companies that rely on such raw materials. The "Made in China 2025" plan aims to develop China into a leading producer of high technologies. The associated promotion of domestic companies and technologies has led to a shift in supply chains away from European suppliers.

It is to be expected that the trade-restricting and trade-diverting measures of both countries will increase rather than decrease. As the US and China are the EU's two main trading partners (see Table 2), this will have a major impact on the EU.

Tab. 2: EU trade in goods by partner countries (in billion euros and as a percentage)

| Rank | Partner | Trading volume (in billion euros) | Share (in percent) |
|------|-----------------------------|-----------------------------------|--------------------|
| 1 | US | 848.9 | 16.72 |
| 2 | China (excluding Hong Kong) | 739.4 | 14.57 |
| 3 | Great Britain | 515.0 | 10.15 |
| 4 | Switzerland | 327.1 | 6.45 |
| 5 | Turkey | 207.0 | 4.08 |
| 6 | Norway | 180.9 | 3.56 |
| 7 | Japan | 134.5 | 2.65 |
| 8 | South Korea | 130.9 | 2.58 |
| 9 | India | 113.5 | 2.24 |
| 10 | Russia | 89.0 | 1.75 |
| 11 | Brazil | 87.5 | 1.72 |
| 12 | Mexico | 81.7 | 1.61 |
| 13 | Taiwan | 77.8 | 1.53 |
| 14 | Canada | 76.4 | 1.50 |
| 15 | Saudi Arabia | 70.7 | 1.39 |
| 16 | Ukraine | 61.9 | 1.22 |
| 17 | Vietnam | 59.0 | 1.16 |
| 18 | Morocco | 56.4 | 1.11 |
| 19 | United Arab Emirates | 55.9 | 1.10 |
| 20 | Singapore | 52.6 | 1.04 |
| | Other partners | 1,109.5 | 21.9 |

Source: Own calculations, Eurostat.

In principle, managing geo-economic risks is an entrepreneurial task. However, policymakers can and should support companies by adding geo-economic protection to the EU single market. Specifically, geo-economic protection consists of three aspects:

- protection against supply chain disruptions for critical resources (section 3.1),
- protection of the EU single market from coercive economic measures (section 3.2) and
- protection of the EU single market against distortions of competition due to third-party subsidies (section 3.3).

These three aspects are explained below.

3.1 Protection against Supply Disruptions of critical resources

One important way of combating geopolitical risks is protection against disruptions in the supply of critical resources. To this end, it is necessary to reduce the EU's one-sided dependence on critical resources, such as energy supply and raw materials, which are important for the digital and green transition and for defence. This can be achieved by setting up production facilities in the single market and by researching alternative technologies. In addition, security of supply can be improved by way of strategic stockpiling and international partnerships with reliable suppliers. The latter will come into conflict with the EU's environmental and social policy objectives because some suppliers in third countries will be unwilling to comply with the EU's environmental and social policy provisions if they

are able to sell their products to other customers without having to comply with such provisions. The EU must set clear priorities here.

Measures have already been taken by the EU to improve the security of supply. These include the Global Gateway investment programme, with which the EU aims to bind emerging and developing countries more closely to itself¹¹; the Internal Market Emergency and Resilience Act (IMERA), which is intended to help prepare the single market for future crises and improve the resilience of the single market; and the Critical Raw Materials Act, which is intended to ensure a secure and sustainable supply of critical raw materials to the EU. The new EU Commission must review these measures, whose effectiveness and efficiency is by no means certain as the EU competes with other major economic areas in the international raw materials markets. The new EU Commission should therefore intensify its efforts to protect European companies against supply chain disruptions.

The EU will be in a better position to protect itself against supply disruptions if it is economically strong, i.e. internationally competitive.¹² This includes, in particular, technological leadership. An economically strong single market also makes it easier to form alliances with like-minded partners and to advocate a reformed multilateral trading system. Finally, it also makes it easier to finance production facilities within the single market.

3.2 Protection against economic coercion by third countries

Another important way of combating geopolitical risks is protection against coercive economic measures. Coercive economic measures are state measures aimed at influencing the behaviour of another state by exerting economic pressure (or the threat thereof).¹³ Most notably, such measures can take the form of trade restrictions or financial sanctions.¹⁴ An example of a coercive economic measure is China's embargo on Lithuanian exports to China and Chinese imports after Taiwan opened a representative office in Lithuania. Another example is the export ban imposed by the US on the Dutch chip industry supplier ASML. The company is no longer allowed to supply Chinese customers with certain lithography systems as, due to American pressure, the Dutch government has withdrawn the necessary licence. The growing geopolitical tensions will lead to an increased use of such measures.

The EU has developed several instruments and strategies to protect its Member States and companies from external economic coercion. For example, the EU adopted the Anti-Coercion Instrument (ACI) in 2021 which is intended to prevent third countries from using coercive measures against the EU or its Member States by enabling countermeasures.¹⁵ In the broadest sense, the regulation adopted in 2019 to create a framework for the screening of foreign direct investments is also one of these protection instruments. It enables Member States to scrutinise investments from third countries in strategic sectors to ensure that they do not pose a threat to security or public order.

¹¹ See Wolf, A. and E. Poli (2024): A Global Gateway to Secure Supply Chains?, cepStudy No. 3, available at <https://www.cep.eu/eu-themen/details/cep/a-global-gateway-to-secure-supply-chains-cepstudie.html>.

¹² For the measures required for this, see chapter 5.

¹³ European Council (2023): Trade: Council adopts regulation to protect the EU from economic coercion by third countries, press release of 23 October 2023, available at <https://www.consilium.europa.eu/de/press/press-releases/2023/10/23/trade-council-adopts-a-regulation-to-protect-the-eu-from-third-country-economic-coercion/>.

¹⁴ See United Nations (19973): Charter of the United Nations, Chapter VII, Article 41.

¹⁵ European Council (2023): Trade: Council adopts regulation to protect the EU from economic coercion by third countries, press release of 23 October 2023, available at <https://www.consilium.europa.eu/de/press/press-releases/2023/10/23/trade-council-adopts-a-regulation-to-protect-the-eu-from-third-country-economic-coercion/>.

The new EU Commission must apply the existing measures consistently without creating legal uncertainty and without imposing an additional bureaucratic burden on companies. The EU should establish and expand international alliances allowing it to draw on broader support in the event of a conflict. Technological sovereignty and an internationally competitive economy are helpful when applying the instruments and should also therefore be the subject of measures.

3.3 Protection against distortions of competition due to third-party subsidies

Subsidies granted by third countries can significantly change the competitive conditions of the single market because they enable the subsidised companies to offer their products and services in the single market at a lower cost. Companies can be subsidised in various ways, such as by direct grants, tax concessions or more favourable loans.¹⁶ However, the result is always a distortion of the market as subsidised products can be sold more cheaply. Subsidies from third countries therefore undermine the competitiveness of European companies who have to manage without such aid because European subsidies are often subject to much stricter regulations than those in third countries. Third-country subsidies also distort investments resulting in erosion of the industrial base, and impede the EU's technological sovereignty in important key industries, which also makes them geopolitically important. In many cases, they are deliberately used by third countries to gain geopolitical advantage. One example of strategic subsidies is the extensive financial support for the electric car industry in China, which gives companies such as BYD a clear advantage over European car manufacturers. Chinese wind turbine manufacturers, such as Goldwing and Mingyang, also receive extensive subsidies.¹⁷ All of this not only jeopardises competition in the EU but is also of geopolitical importance as it could create technological leadership as well as dependencies in a key industry and set global standards.

The European Union has already developed mechanisms to counteract the negative effects of third-country subsidies in the single market. For example, the EU Commission can impose tariffs on products subsidised by third countries as part of an anti-subsidy procedure to offset the competitive advantage. It is also possible to prohibit the purchase of European companies by subsidised foreign companies. Finally, companies that have received subsidies from third countries can be excluded from participating in public tenders within the EU.

All of these measures have helped to mitigate some of the most pressing effects of foreign subsidies but they face challenges regarding implementation and scope. One particular problem is that the processes are often lengthy due to the complexity of identifying and assessing subsidies. To meet the challenges, the new EU Commission should use negotiations to persuade third countries, above all China, to abolish particularly harmful subsidies. It should also strive for stronger international cooperation to create more standardised global regulations against subsidies. Finally, it should introduce faster and more efficient investigation procedures to be able to react promptly to subsidies.

To ensure this triple protection, it is essential to strengthen the single market economically. The stronger the single market is in economic terms, the more it can contribute to solving geo-economic

¹⁶ See European Commission (2023): Regulation on subsidies from third countries, available at https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy/foreign-subsidies-regulation_de.

¹⁷ See Kiel Institute for the World Economy (2024): Foul play? On the amount and scope of industrial subsidies in China, available at https://www.ifw-kiel.de/fileadmin/Dateiverwaltung/IfW-Publications/fis-import/3efc594b-3e1c-41e4-b6b0-150e947a45db-KBP173_dt.pdf.

challenges, for example because it will be more attractive for third countries to conclude trade agreements with the EU and adopt European standards. In concrete terms, it is necessary to make the single market a technologically innovative and entrepreneurially free area. Section 4 will set out how this is to be.

4 Improving the business environment in the single market and removing growth barriers

As indicated above, the business environment in the single market urgently needs to be improved, so that businesses invest and innovate more. To achieve this goal, we strongly recommend that both the EU and the Member States – individually and collectively – recognize the need for change and combine all possible efforts to

- create a simplified, understandable, predictable and more coherent regulatory environment, most notably in the Digital Sector (Section 4.1),
- support uniform transposition, implementation and enforcement of EU law (section 4.2),
- remove obstacles to the exercise of the four fundamental freedoms (section 4.3), and
- reduce bureaucracy (Section 4.4).

4.1 Create a simplified, understandable, predictable and more coherent regulatory environment

A predictable and simple regulatory environment is a prerequisite for mobilising private investment but in the single market this is often lacking. Instead, rules are complex and unpredictable, e.g. in the area of EU digital law, which makes the single market less attractive for companies.¹⁸ Beyond this, the greater complexity of EU regulation increases the risk of a divergent interpretation and application of the law by users.

To ensure a simple, understandable, predictable and more coherent regulatory environment, the EU must take in particular the following measures:

- Avoid overregulation and focus instead on supporting the implementation and enforcement of the existing EU acquis.
- Avoid or, where necessary, clarify persisting legal ambiguities in EU regulation to ensure that it can be applied easily, correctly and uniformly by businesses. Legal uncertainties often lead to costly legal advice and legal disputes and/or hamper innovation because companies tend to refrain from innovating for fear of acting unlawfully.
- Ensure that (further) EU regulation is as simple as possible. Wherever feasible, a simple test logic for companies should be provided (“if a, then b”). The Inflation Reduction Act in the US, that allows companies to obtain substantial tax credits for investments in renewable energy, is a good example of a law which is based on simple principles and is nevertheless highly effective and investment-promoting – albeit one that could not be implemented in the EU due to a lack of harmonization of the national tax systems of the EU Member States.
- Provide (better) explanations of complex regulation using clear EU-wide guidelines.

¹⁸ ERT Vision Paper 2024-2029, Securing Europe’s place in a new world order, p. 22, available at <https://ert.eu/documents/vision2024/>.

- Provide all-round guidance beyond the individual legal acts, clarifying and explaining interrelationships between them, as well as existing overlaps, and suggesting how synergy effects could be used to fulfil similar or overlapping obligations.
- As far as possible, consolidate and streamline existing laws.

The need to reduce regulatory complexity and make it manageable becomes apparent when considering EU regulation in the dynamic digital sphere. Since its Strategy for a digital single market in 2015, the EU has been continuously expanding the single market. During this final legislative period, for example, the EU has adopted a large number of cross-sectoral legal acts to create a digital single market with standardised rules. With the Digital Markets Act (DMA) and the Digital Services Act (DSA), for example, the EU has established a series of common requirements for digital platforms in order to improve fairness and competitiveness and ensure a more transparent and secure online environment in the EU. The EU also wants to create a single market for data and has established a legal framework for a European data economy, including the Data Act, the Data Governance Act (DGA) and, on a sectoral basis, the Regulation on the European Health Data Space (EHDS), which is to be supplemented by further data spaces in other sectors. Finally, the Artificial Intelligence Act (AIA) is intended to promote the development, use and dissemination of artificial intelligence in the single market while ensuring a high level of protection of public interests and fundamental rights. All these legal acts are interlinked and sometimes overlap which often makes them difficult to interpret. Despite extensive coordination efforts, digital regulation in the EU can still be described to a large extent as a regulatory patchwork quilt containing a multitude of inconsistencies and legal ambiguities.

We therefore recommend that the EU Commission take the following measures, in cooperation with the established bodies in an advisory and supporting function¹⁹, where appropriate:

- Create more transparency regarding the interplay of the various interlocking regulations. We recommend that the EU Commission elaborate and publish an “EU Digital Rulebook”, similar to the “Cloud Rulebook” announced by the European Commission in 2020 in its European Strategy for Data. The rulebook should summarise all the rules applicable to the relevant stakeholders, including platforms and other intermediary services, data holders and data recipients, and providers of data processing services. It should provide a good overview and clarify the interrelationships between the individual legal acts, allowing businesses to understand the legal situation more easily and quickly, and recognise how they can use synergies to comply with similar or overlapping obligations, such as information and documentation duties under the GDPR and the AIA.
- Eliminate ambiguities and reduce legal uncertainties flagged by the competent authorities or relevant stakeholders, for example by way of interpretation aids and other guidelines.
- Where necessary and not yet done, recognise duplications and harmonise definitions in order to enhance coordination between the individual digital acts.
- Where legal uncertainty, inconsistencies and duplications cannot be eliminated by guidance and interpretation aids, take legislative action at an early stage within the review and evaluation periods foreseen in the respective regulations.

¹⁹ For example, the European Board for Digital Services (DSA), the European Data Innovation Board (Data Act, DGA), the High-Level Group for the DMA, the European Artificial Intelligence Board (AIA), the EDPB and the ENISA.

- Promptly review all adopted legal acts linked to the Digital Single Market within the envisaged review and evaluation periods, focusing not only on their suitability for the intended purposes but also on their interplay with other relevant horizontal or sector-specific Union legal acts.²⁰
- Where relevant, promptly provide model contract provisions for the most common contracts, e.g. under the Data Act, so that companies can apply these laws as easily as possible. A first set of guidelines and model contract provisions should be published in good time before the law comes into force or at the latest shortly thereafter.
- Eliminate or at least reduce legal uncertainty regarding the GDPR. The fact that the new digital acts such as the Data Act expressly specify that all rights and obligations arising from the GDPR remain unchanged and must be complied with – in addition to the provisions contained in these new legal acts –, is appropriate, but only of limited help in eliminating legal uncertainty. Data protection concerns and data protection grey areas are among the most frequently cited legal obstacles to data trading and the creation of downstream data markets.²¹ In particular, clarification of the point at which data is considered anonymised, and the GDPR therefore no longer applicable, is required as synthetic data also poses certain non-negligible re-identification and thus privacy protection risks.²² The development of standards that can be assumed to provide a sufficient degree of anonymisation should be supported.²³ In cases where the GDPR is applicable, companies must be given more guidance about the legal basis for the sharing and use of data.

4.2 Support uniform transposition, implementation and enforcement of EU law

Despite harmonization efforts, there are still significant differences in the national transposition of EU directives and the implementation and enforcement of regulations, which causes regulatory fragmentation. Even in areas where harmonisation already exists in the form of an EU directive or regulation, companies that want to benefit from the single market are still confronted with considerable national differences. As a result, companies must familiarize themselves with various national laws and national administrative procedures. This requires a considerable amount of time and effort.

The above-mentioned differences are due to

- the divergent transposition of EU Single Market Directives by the EU Member States, such as the EU Services Directive 2006/123/EC²⁴ and the Posted Workers Directive²⁵ and the Posted Workers Enforcement Directive;²⁶ and

²⁰ This is for example expressly foreseen in Art. 49 (1) lit (j) of the Data Act, 91 (1) lit (b) of the Digital Services Act and Art. 40 (6) of the Digital Markets Act.

²¹ For Germany, see Röhl, K.-H./Bolwin, L./Hüttel, P., Datenwirtschaft in Deutschland – Wo stehen die Unternehmen in der Datennutzung und was sind ihre größten Hemmnisse?, Study of the Institute of the German Economy (iw) on behalf of the BDI, 24.02.2021, S. 4, 40f., available (in German language) at <https://www.iwkoeln.de/studien/klaus-heiner-roehl-lennart-bolwin-wo-stehen-die-unternehmen-in-der-datennutzung-und-was-sind-ihre-groessten-hemmnisse.html>.

²² Beduschi, A., Synthetic data protection: Towards a paradigm change in data regulation?, 14 February 2024, available at <https://journals.sagepub.com/doi/10.1177/20539517241231277>.

²³ See Hoffmann, A./Eckhardt, P., cep PolicyBrief EU Data Act, No. 11/2022, p. 38, available (in German language) at <https://www.cep.eu/eu-themen/details/cep/eu-data-act-cepanalyse-zu-com2022-68.html>.

²⁴ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32006L0123>.

²⁵ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, available at <https://eur-lex.europa.eu/eli/dir/1996/71/oj>.

²⁶ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU)

- the divergent administrative implementation in the Member States which are responsible for the administrative implementation of EU law, resulting, for example, in different national notification or application procedures.

In the case of single market directives, not only are there transposition deficits (the gap between the number of single market directives adopted by the EU and the number of directives transposed by each Member State) and transposition delays but also conformity deficits²⁷. Although transposition and conformity deficits seem to have decreased on average in recent times²⁸, incorrect transposition, implementation and application of EU rules hinders the smooth functioning of the single market. Delays or gaps in transposition deprive people and businesses of the benefits arising from the agreed rules.²⁹

As regards single market regulations, the GDPR is a good example of an EU legal act that is subject to major differences in implementation, even though – as a regulation – it is directly applicable and has the same wording everywhere in the EU. For example, the procedures for notifying a data breach or the requirements for keeping a record of processing activities differ between the Member States. Although the room for manoeuvre enjoyed by Member States when implementing EU law, as well as the independence of the national authorities, must be respected, the above-mentioned differences increase the complexity and costs for businesses operating across borders, as highlighted by the differences in implementing the GDPR³⁰, Posting of Workers Directive³¹, and other key EU legislation.

The increased complexity of EU regulation discussed in Section 4.1 may also play a role in this respect as it increases the risk of divergent interpretation by the Member States, who are responsible for the implementation and, in general, also for the enforcement of EU law. Differences resulting from divergent interpretation come in addition to those resulting from national specificities that have been deliberately implemented in a certain way by a particular Member State.

Additionally, the trend towards excessive implementation and “gold plating” in some Member States is exacerbating the situation by imposing burdens on companies that go beyond those required by EU legislation. For example, the additional proof and documentation requirements in some Member States significantly exceed European standards.

At the same time, consistent enforcement of EU law and in particular single market rules is a prerequisite for the economic growth of the single market, which in turn requires effective, efficient, well-organized and motivated enforcement structures and bodies, including the Commission and national supervisory authorities.

No 1024/2012 on administrative cooperation through the Internal Market Information System, available at <https://eur-lex.europa.eu/eli/dir/2014/67/oj>.

²⁷ https://single-market-scoreboard.ec.europa.eu/enforcement-tools/transposition_en.

²⁸ https://single-market-scoreboard.ec.europa.eu/enforcement-tools/transposition_en.

²⁹ https://single-market-scoreboard.ec.europa.eu/enforcement-tools/transposition_en.

³⁰ Centre for European Policy and Prognos (2023): Regulatory and financial burdens of EU legislation in four Member States – a comparative study, Vol. 4: Burdens arising from Art. 30 and 33 of the General Data Protection Regulation, available at https://www.familienunternehmen.de/media/pages/publikationen/regulatorische-und-finanzielle-belastungen-durch-eu-gesetzgebung-in-vier-mitgliedstaaten/b19884061c-1709646911/regulatory-and-financial-burdens-of-eu-legislation-in-four-member-states_vol4_stiftung-familienunternehmen.pdf.

³¹ Centre for European Policy and Prognos (2022): Regulatory and financial burdens of EU legislation in four Member States – a comparative study; Vol. 2: Burdens arising from the Posting of Workers Directive; p. 40; available at <https://www.familienunternehmen.de/en/publications/burdens-arising-from-the-posting-of-workers-directive>.

To support uniform transposition and implementation as well as the strict enforcement of EU law, in particular, the following measures must be taken:

The EU must

- avoid or, where necessary, clarify persisting legal ambiguities in EU law also for the purpose of ensuring uniform interpretation, implementation and/or transposition by EU Member States and their authorities;
- already think about enabling simple and practicable implementation and enforcement of the rules when drafting a legal act, even though the implementation of EU law falls within the remit of the Member States;
- support Member States in the uniform implementation of EU rules;
- address challenges and provide support to Member States during the implementation process, including by means of guidance documents, especially in the case of complex legal acts, and
- intensify and accelerate infringement proceedings for non-implementation or incorrect implementation of EU directives.

The Member States must do the following:

- Show more discipline when it comes to the timely and correct transposition of EU Directives and implementing EU law, and avoid over-regulation and gold plating.
- Stop behaviour that is hostile to the single market, including protectionist measures which may protect companies in a certain Member State but which harm consumers and endanger the single market.
- Continue and intensify stakeholder dialogues helping them to implement EU law in a practice-oriented way.
- Promote closer, earlier and more intensive cooperation, including with legislators and national administrations in other Member States, right from the start of the process of implementing/transposing EU law.
- Ensure swift creation of the necessary enforcement structures, including for the enforcement of the new EU digital law, and adequately equip national authorities to enable timely and effective enforcement.
- Promote uniform application and compliance by businesses. Competent supervisory authorities should provide hands-on guidance and enable easy-to-use, user-friendly and time-saving tools to facilitate compliance with EU law. This should preferably be coordinated at EU level to reduce inconsistencies between the tools and guidance developed and provided by the individual national supervisory authorities, while fully respecting their independence.
- Specifically, ensure faster agreement on guidelines and recommendations in the European Data Protection Board to promote consistent application of the GDPR.
- Generally, ensure that competent national supervisory authorities combine all efforts and share best practices so that each individual authority does not have to reinvent the wheel. For example, instead of requiring companies to repeatedly submit the same information to different authorities, automatic data exchange and register synchronisation should be used wherever practicable and legally permissible. Where this is not the case, authorities should examine and develop solutions that help companies save a significant amount of time and effort. For example, instead of requiring

companies to read a multi-page guidance document to correctly fill in a template using (online) text fields, businesses could be allowed to provide information by way of a spreadsheet containing clearly structured drop-down menus.

The EU and the Member States must

- define exemptions from EU rules as well as facilitations, especially those for SMEs, in a clear and understandable way to enable an easy and uniform interpretation and application thereof. Ensure that companies are not discouraged from making use of an exemption, e.g. due to legal uncertainty.³² Regularly review exemptions by way of empirical evaluations to verify they are still fit for purpose, and if not, make appropriate adjustments,
- clarify and better coordinate the roles and competences of existing and new supervisory authorities, boards and other bodies to ensure timely, harmonised and effective enforcement, and
- strengthen technical expertise and know-how within the competent supervisory authorities, in particular to ensure uniform and strict enforcement of the new EU digital laws.

4.3 Remove other obstacles to the exercise of the fundamental freedoms

The four fundamental freedoms –free movement of goods, services, people and capital – form the basis of the single market. The addressees of the EU’s fundamental freedoms are first and foremost the EU Member States.³³ However, in addition to the problems of different interpretation, implementation, application and enforcement outlined above, further trade barriers continue to exist. One example of a barrier to the free movement of goods is the existence of numerous different national food labelling requirements. In the services sector, too, there is a plethora of national rules and vested interests giving rise to barriers, such as the difficulties faced by businesses wishing to notify the posting of workers to another Member State.

Such national requirements often (also) serve important objectives, such as consumer and environmental protection, but Member States also impose purely protective rules, such as minimum sales quotas for domestic products and obligations to promote domestic products. Likewise, national rules on the notification of the posting of workers suggest that some Member States and their authorities indirectly try to discourage postings to their country by making notification unnecessarily complicated.

Some national barriers may be unjustified if they contradict the rules of the single market but other national approaches restricting the exercise of the fundamental freedoms are fully in line with EU law or are justified under the treaties or under the case law of the European Court of Justice.

For the internal market to be fully effective, fundamental freedoms must be strengthened by identifying and removing not only unjustified but also justified barriers at Member State level which hamper the exercise of these freedoms.

Therefore, the EU and the Member States should take the following measures:

³² For example, the exemption from the duty to maintain a record of processing activities in Art. 30 (5) of the GDPR contains so far-reaching and complex counter-exemptions that virtually no company benefits from the exemption, see e.g. Centre for European Policy and Prognos AG (2023): Regulatory and financial burdens of EU legislation in four Member States, pp. XIV, XVI, 9f. available at <https://www.familienunternehmen.de/en/publications/burdens-araising-from-the-general-data-protection-regulation-2023>.

³³ Grabitz/Hilf/Nettesheim/Terhechte, EUV, 80. EL August 2023, EUV Art- 3 No. 40.

- Encourage and support Member States to abolish existing protectionist rules and not to adopt new ones. Promote dialogues to demonstrate and explain to the Member States that protectionist measures may initially appear to help them but, in the long run, jeopardise the overall goal of strengthening the single market and thereby creating a European "counterweight" to the US and China. Member States should prioritise the common good of the EU over national protectionist measures.
- Expand the single market to include regulatory areas that are not yet integrated. The single market is currently incomplete in some economic sectors, particularly financial services, energy and telecommunications³⁴. Since an incomplete internal market cannot be fully effective, Member States must stop rejecting further integration in these areas and agree on how to make the single market comprehensive and on how to integrate these policy areas.

4.4 Reduce Bureaucracy

The administrative burden associated with compliance, particularly for SMEs, hinders competitiveness and innovation. Businesses are increasingly complaining that navigating the regulatory landscape and ensuring compliance with a myriad of EU and national laws is both time-consuming and costly. They are thus calling on the EU to prioritise the reduction of bureaucracy, especially reporting obligations³⁵.

Although bureaucratic obligations are in most cases useful and beneficial, a better balance must be found. It is becoming more and more apparent that businesses need more freedom to concentrate on their genuine tasks, including innovation, production, trade and provision of services, rather than on fulfilling reporting and other bureaucratic obligations. Beyond this, having fewer bureaucratic obligations will also reduce compliance costs for businesses.

To increase the competitiveness of European businesses and make Europe more attractive as a business location, the EU must therefore significantly intensify the efforts it has already made³⁶ to reduce bureaucracy.

In particular, the EU must

- continue to cut red tape and reduce bureaucracy and, in particular, reporting obligations to what is absolutely necessary and
- ease the burden on SMEs and relieve more companies from bureaucratic obligations, inter alia by updating the definition of an SME.

5 Conclusion

The single market was created to increase the prosperity of people in the EU. To this end, the four fundamental freedoms have been supplemented by a set of rules that protect consumers, companies and the environment in a variety of ways. The EU is currently facing a major new challenge due to changes in the geopolitical situation. The rules-based, multilateral world order of the post-war era is

³⁴ In place of many: ERT Vision Paper 2024-2029, Securing Europe's place in a new world order, p. 25, available at <https://ert.eu/documents/vision2024/>; Letta, E., Much more than a Market, April 2024, p. 8, available at <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>.

³⁵ IHK Business Barometer on the 2024 EU elections, pp. 4, 8, available at <https://www.dihk.de/resource/blob/115120/135f9aad51341d6fc0a0115e267203da/ihk-unternehmensbarometer-eu-wahl-2024-eng-data.pdf>.

³⁶ For example, the „one in, one out“ rule.

over. The US is no longer a reliable partner and China is gaining more and more influence together with the "global South". Furthermore, the EU is in a geopolitical competition with China and the US, the aim of which is to gain economic strength and technological leadership in order to expand geopolitical power. Both countries are trying by all means available to conquer strategically important supply chains and achieve technological leadership at the expense of the rest of the world. This jeopardises the EU's geopolitical power and its industrial base. The interdependence of international trade, technological leadership, security issues and geopolitical power will continue to increase.

Managing geo-economic risks is first and foremost an entrepreneurial task. However, policymakers can and should support companies by making the EU single market responsible for geo-economic protection. We therefore propose giving the single market a further protective purpose: protection against geo-economic threats. In concrete terms, this means, firstly, protection against supply chain disruptions for critical resources, secondly, protection against economic coercion by third countries, and thirdly, protection against distortions of competition due to strategic third-party subsidies.

Protection against supply chain disruptions for critical resources

This will require a reduction in the EU's one-sided dependence on critical resources, such as energy supply and raw materials, which are important for the digital and green transition and for defence. This can be achieved by setting up production facilities in the single market and by researching alternative technologies. In addition, strategic stockpiling and international partnerships with reliable suppliers can improve the security of supply. The EU has already taken some measures to improve the security of supply. The new EU Commission must review these measures, whose effectiveness and efficiency are by no means certain, as the EU competes with other major economic areas in the international raw materials markets. The new EU Commission should therefore intensify its efforts to protect European companies against supply disruptions.

Protection against economic coercion by third countries

Coercive economic measures are state measures aimed at influencing the behaviour of another state by exerting economic pressure (or the threat thereof). Most notably, such measures can take the form of trade restrictions or financial sanctions. The EU has developed several instruments and strategies to protect its Member States and companies from external economic coercion. The new EU Commission must apply the existing measures consistently without creating legal uncertainty and without increasing the bureaucratic burden on companies as a result. The EU should establish and expand international alliances allowing it to draw on broader support in the event of a conflict. Technological sovereignty and an internationally competitive economy are helpful when applying the instruments and should also therefore be the subject of measures.

Protection against distortions of competition due to third-party subsidies

Subsidies from third countries undermine the competitiveness of European companies who have to manage without such aid because European subsidies are often subject to much stricter regulations than those in third countries. Third-country subsidies also distort investments and impede the EU's technological sovereignty in important key industries, which also makes them geopolitically important. In many cases, they are deliberately used by third countries to gain geopolitical advantage. The European Union has already developed mechanisms to counteract the negative effects of third-country subsidies in the single market. All measures have helped to mitigate some of the most pressing

effects of foreign subsidies but they face challenges regarding their implementation and scope. One particular problem is that the processes are often lengthy due to the complexity of identifying and assessing subsidies. To meet the challenges, the new EU Commission should use negotiations to persuade third countries, above all China, to abolish particularly harmful subsidies. It should also strive for stronger international cooperation to create more standardised global regulations against subsidies. Finally, it should introduce faster and more efficient investigation procedures to be able to react promptly to subsidies.

To provide this triple protection, economic strengthening of the single market is essential. In particular, the business environment in the single market urgently needs to be improved, so that businesses invest and innovate more. To achieve this goal, we strongly recommend that both the EU and the Member States – individually and collectively – recognize the need for change and combine all possible efforts to

- create a simplified, understandable, predictable and more coherent regulatory environment, most notably in the Digital Sector,
- support uniform transposition, implementation and enforcement of EU law,
- remove other obstacles to the exercise of the four fundamental freedoms, and
- reduce bureaucracy.

The stronger the single market, the better it can contribute to solving the geo-economic challenges, for example, because it makes it more attractive for third countries to conclude trade agreements with the EU and adopt European standards. Transformation of the internal market into a technologically innovative and entrepreneurial free market is also necessary because the EU is in a systemic competition with the USA and China. Both countries want to strengthen their geopolitical influence through economic strength and technological leadership. To face this challenge, the aim of the new EU Commission must be to transform the single market into a geo-economic shelter based on technological innovation and entrepreneurial freedom.



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