



Berlin, November 2015

Comments by the Federal Government of Germany on the 2015 Single Market Strategy

The European Single Market is a success story. It forms the basis for growth and prosperity in Europe. More than 500 million citizens and the companies in the European Union benefit from the freedoms afforded by the Single Market. The Federal Government therefore welcomes the fact that the Commission has put forward a new strategy for the Single Market. This strategy is needed to complement the European Commission's Digital Single Market Strategy and to deepen the Single Market both in the digital and analogue spheres.

Our objective is to have a Single Market whose full potential is unlocked for our citizens and companies.

The Single Market must give companies opportunities for growth and help them be more competitive internationally. Given the fast pace of change in the technologies, we need to create a framework that fosters the development of new business models for the digital industries and that promotes creative ideas and innovation. Furthermore, it is important that there are as few impediments to the formation of European value chains as possible. This will be crucial for Europe's industrial core. This is not to forget that the Single Market must be particularly open to small and medium-sized enterprises, so that these can tap into its full potential and grow beyond national borders.

We need the Single Market to also give consumers cross-border access to a large number of products and services. In principle, this access should be non-discriminatory. This means that prices, terms and conditions should not be different depending on where a consumer lives or what nationality they have, unless there are objective criteria justifying these differences. The new strategy should encourage labour mobility, not least as a means of reducing the imbalances that exist between the national labour markets. Citizens and companies need to be provided with all the information that will allow them to harness the opportunities afforded by the Single Market. This also includes information on which national and European institutions they can turn to for quick and effective support in the event that they encounter problems.



The measures proposed by the European Commission reflect many of these objectives. The Federal Government awaits these proposals with interest and will play a constructive part in the negotiations to come. We do feel, however, that it is extremely important to bear in mind the following: there are already several thousands of pieces of legislation that have come into force since the establishment of the Single Market, and which have made it a reality. It is not ever more new regulation that will help deliver further integration within the Single Market, but also correct implementation and enforcement of those rules that already exist. The Federal Government therefore welcomes that the European Commission also places a focus on enforcement and limits its regulatory projects to a small number of areas only.

With regard to these new measures, the Federal Government takes the following view:

1) Enabling the balanced development of the collaborative economy

In principle, the Federal Government endorses the 'European agenda for the collaborative economy' announced by the European Commission.

The collaborative economy is a growing phenomenon in Germany as well, and comes in ever more different forms and shapes. These range from simple neighbourhood help to commercial platforms offering agency work or leasing/rental services. Germany's economic success depends on innovation and creative ideas. Consumers can also draw major benefits from the collaborative economy – including as providers of goods and services. These benefits include greater choice, better transparency, and better possibilities to use goods. Legal certainty is key to all of this. The Federal Government is therefore currently reviewing German national regulation as to whether there is a need for adjustments. Much of the review will focus on those business models in the collaborative economy that are based on private individuals' providing services in exchange for a fee. The purpose of the review is to prevent the emergence of grey areas in which tax and labour laws and regulatory requirements can be circumvented, and consumer rights undermined.

It is to be expected that the measure planned by the European Commission can provide better legal certainty regarding the application of existing EU rules. The Federal Government particularly welcomes that the analysis will also address any regulatory gaps in the existing legal framework. The Federal Government also welcomes the European Commission's intention to monitor the development of the collaborative economy, since there is very little data on this available in Germany.



2) Helping SMEs and start-ups to grow

The Federal Government takes a largely positive view of the measures announced to promote small and medium-sized enterprises (SMEs) and start-ups. However, the details of the proposals have yet to be assessed.

The Federal Government supports the measures that will be introduced under the Capital Markets Union Action Plan to provide SMEs with broader access to finance. In particular, the Federal Government welcomes the plan of using a quarter of all guarantees provided from the European Fund for Strategic Investments to support innovative midcaps and SMEs.

In principle, the Federal Government supports the European Commission's intention to make it easier for innovators from the rest of the world to come to the EU. Similar to what applies under the Blue Card scheme, self-employed entrepreneurs who prove that they have a successful business could be granted settlement permits sooner. Furthermore, the settlement requirements could be eased for self-employed applicants that have certain qualifications, provided that these qualifications have a bearing on the activity pursued.

The Federal Government holds that, while it would be desirable to have greater harmonisation within insolvency law, achieving this would currently risk having undesired effects and drawbacks which would cancel out the benefits – if not turn them into negatives. The Federal Government therefore supports this endeavour to the extent that it is based on a thorough analysis to pinpoint areas where legal harmonisation is needed, and delivers this using a prudent and incremental approach. In contrast, the Federal Government urges against any measures that would bring about a swift harmonisation of complex legal matters and do so at a great level of detail. The proposals for a pre-insolvency restructuring procedure and a debt-discharge procedure for natural persons engaged in entrepreneurial activities are characterised by their complexity and a high level of detail, which is why the Federal Government has its reservations about them.

The efforts to systematically eliminate the cost of unnecessary regulation are supported by the Federal Government. The Federal Government is strongly in favour of establishing reduction targets in particularly burdensome areas, especially for SMEs, and welcomes the fact that the REFIT platform is to play an important role in this.

Reduction targets must be established in a way that ensures that existing, legitimate standards of protection are respected. Some of the standards in company-registration law/company law, in particular, help foster transparency, render legal and



economic transactions more reliable, and boost consumers' confidence and trust in the Single Market.

The proposals to ease the VAT-related administrative burden on SMEs and start-ups must not give these companies an unfair advantage over other companies or result in a reduction in national tax revenue. The division of competences between the EU and the Member States must be upheld in line with the provisions of the Treaty.

The Federal Government welcomes the plans for a Single Digital Gateway pooling all information for SMEs interested in cross-border operations. However, to avoid duplication, it will be crucial for tried-and-tested structures such as the Enterprise Europe Network to be actively involved in the creation of the gateway.

Overall, the measures envisaged by the Commission to support SMEs and start-ups qualify as a first step to give these companies better opportunities to use the potential offered by the Single Market.

At the same time, the Federal Government holds that, in the medium term, a new Small Business Act (SBA) is needed to work as a large-scale SME programme which increases visibility of European SME policy.

3) Making the market without borders for services a practical reality

The Federal Government takes a differentiated view of the measures proposed by the European Commission to strengthen the Single Market in services.

According to the understanding of the Federal Government, the introduction of a 'services passport' should reduce administrative burden in cross-border activities. In principle, the Federal Government is open to this idea. It is crucial that the instrument will have a genuine added value and a positive cost-benefit ratio. Most importantly, the services passport should, if possible, not create an additional administrative burden. Furthermore, it will have to be designed in a way that still allows the host Member State to uphold certain requirements vis-à-vis the service provider, where these requirements are justified. The Federal Government rejects the introduction of the country-of-origin principle.

Regarding the communications on regulated professions, the Federal Government holds that the review must be conducted without prejudging the outcome and that it must take into account legitimate reasons for regulating the access to and the exercise of a profession. Member States' competence for regulating professional activities must not be called into question. The same applies with regard to the development of an analytical framework for assessing the proportionality of existing



professional regulations. An analytical framework of this kind could merely set out guidance for Member States, which these ought to acknowledge as best-practice examples.

The Federal Government has reservations about a legislative act regarding national legal form and shareholding requirements. Any plan whereby these requirements would be abolished altogether on the grounds that different requirements apply in different Member States could not be supported. The Services Directive provides for Member States to retain national requirements, as long as they are justified.

4) Addressing restrictions in the retail sector

In principle, the Federal Government is open to the European Commission's plan to set out best-practices for facilitating retail establishment. In this context, it would be interesting to receive an overview of best-practices from the 2014 retail peer review, which assessed the requirements to be met when starting a retail business. Exchanging best-practice examples can help provide for greater clarity how to strike a sound balance between freedom of establishment, spatial planning, planning that is relevant to trade, and environmental and social protection. At the same time, it has to be clear that these best-practice examples set out by the European Commission are non-binding recommendations only, and that the Member States will retain full competence for spatial and land-use planning.

5) Preventing discrimination of consumers and entrepreneurs

In principle, the Federal Government welcomes the initiative by the European Commission to prohibit unjustified discrimination against service recipients. Unless there are objective reasons for it, unequal treatment of consumers as regards prices, terms and conditions, and access to services, is an impediment to the completion of the Single Market. In principle, European consumers should be free to decide what website registered in which European Member State they want to use when purchasing goods or services (Combating unjustified geo-blocking). At the same time, however, the Federal Government would like to stress that the proposal must also take into account service providers' freedom of contract and competition law. Most importantly, the new legislation must not impose an obligation to contract, which would be detrimental to SMEs in particular. Businesses must retain their right to restrict their operations to some Member States.

The Federal Government understands that the European Commission wants to provide for exemptions from the principle of non-discrimination only in cases where strict criteria (shipping costs, legal requirements, etc.) apply. The European Commission must ensure that the scope for exemptions is not too narrowly defined



and that companies remain free to pursue their legitimate interests. There are cases where pricing calculations will differ widely between Member States. Companies need sufficient flexibility to be able to accommodate these differences. For all these reasons, it will be necessary to look at each individual case in order to establish whether or not there are grounds for an exemption to be granted. The online consultation launched by the European Commission will possibly yield some additional insights.

6) Modernising our standards system

In principle, the Federal Government welcomes a 'Joint initiative on Standardisation'. Joint standards provide for greater transparency and better quality, make it easier for consumers to compare and help open up markets, thus making businesses more competitive. The Federal Government would like to stress that it will be important for the 'Joint initiative on Standardisation' to be put on a broad footing. Most importantly, the Member States, their national standardisation bodies, and the relevant stakeholders must be given the opportunity to participate. Furthermore, it will be important for any changes in procedure to be kept within the boundaries of the existing system so as to prevent the formation of parallel structures.

The Federal Government holds the view that the standardisation initiative must find solutions for the construction sector that ensure that structural safety continues to be the overriding objective. A rather substantial portion of standards is still incomplete, with essential specifications missing. Pending full harmonisation, it must therefore once again be made possible for transitional solutions to be used. It must be ensured that the rules governing construction products do not result in a situation whereby structural safety is compromised.

With regard to standardisation of services attention has to be drawn to the fact that Germany has a number of services sectors that are subject to strong statutory regulation. This notably applies to the areas of social security, healthcare, and education. While European services standards can complement national legislation, they must not conflict with legislative provisions that are justified, nor counteract the division of competences between the EU and the Member States.

Given the vast differences that exist between Member States' standards of healthcare and long-term care, any European standard that would apply to these services would likely be based on the principle of finding the smallest common denominator. In consequence, imposing European standards in this field would risk considerably lowering the existing standards of quality and safety across many Member States. The first existing standards for healthcare services prove these



negative effects. The competence of Member States for their healthcare system, social security and education must be retained.

The German Institute for Standardisation (DIN) has drawn up a German 'standardisation roadmap for services' in cooperation with other stakeholders. This roadmap pinpoints areas (other than healthcare services) which would benefit from standardisation and provides examples of the form these standards could take. This German roadmap could also be used as input for the standardisation work conducted at European level.

7) More transparent, efficient and accountable public procurement

The Federal Government has reservations about the measures that have been announced for the field of public procurement. The Federal Government holds that the focus should be on transposing the new EU public-procurement directives in full and without delay, and that this should be given priority over new measures in the field of public procurement. Even after transposition, the practical effects of the directives remain to be seen and have to be reviewed in due time.

The Federal Government holds that the announced tools for data analysis must not result in new or additional reporting and information obligations for Member States. In principle, the Federal Government takes a positive view of the efforts made by the European Commission to evaluate the procurement remedies system and to improve its effectiveness, efficiency, and transparency – to the extent that this is necessary. Measures to promote networking between review bodies are supported, as long as this is voluntary.

Similarly, the Federal Government holds that the voluntary 'ex ante assessment mechanism' for large-scale infrastructure projects (those worth at least €700 m) should remain optional. It is yet to be seen whether contracting authorities in Germany will make use of this mechanism, given that most of them have access to expert legal advice.

8) Consolidating Europe's intellectual property framework

The Federal Government awaits with interest the European initiatives designed to consolidate and modernise the intellectual property framework. It is important to have in place high levels of protection for intellectual property. The current European legal framework delivers this protection in a very convincing manner. The same applies with regard to the measures to encourage SMEs to make use of their intellectual property rights, and the measures designed to improve the patent system in Europe.



The Federal Government welcomes the fact that the European Commission is engaging in close dialogue with Member States about enforcement. In principle, using the 'follow-the-money' approach to tackle commercial-scale infringements seems valid and sensible. The interests of all parties involved, including customers and consumers, in the protection of their data, must be accommodated. This is particularly important when it comes to reviewing the enforcement framework.

9) A culture of compliance and smart enforcement ('Single Market governance')

In principle, the Federal Government welcomes measures to improve the implementation and enforcement of EU law and a smart enforcement strategy of the European Commission. In particular, the focus should be on those sectors that are relevant for our economies. The Federal Government also endorses regular compliance-dialogues. This ensures that Member States comply with EU law and that remaining questions can be answered quickly and reliably.

Regarding the European Commission's assistance to Member States in transposing EU Directives into national law, it has to be clarified that this can only be provided on a voluntary basis. The Member States will continue to have sole competence over the work of drawing up transposition plans and the relevant legal acts.

The plan for a regulatory initiative that would allow the European Commission to collect information directly from market players is, at this stage, too vague for the Federal Government to be able to comment. The Federal Government awaits the proposal with interest and will conduct a thorough analysis of the details and the legal basis for this instrument. In this context, the Federal Government would like to stress that it is important that the new tool should not result in the creation of a new administrative layer or any additional administrative burden. An information-gathering tool of this kind must not bypass Member States and the division of competences between the EU and the Member States must be upheld in line with the provisions of the Treaty.

The Federal Government welcomes the fact that the European Commission wants to strengthen the SOLVIT network. Most importantly, the European Commission ought to systematically follow-up cases that could not be successfully resolved by SOLVIT in order to decide whether or not additional action is needed. Furthermore, the European Commission should make better use of the SOLVIT database as a tool for identifying barriers that continue to exist in the Single Market, and should report its findings.



10) Improving the delivery of the Services Directive by reforming the notification procedure

In principle, measures designed to improve the notification procedure are supported by the Federal Government. It would be desirable to have more detailed specifications with regard to the notification. However, the Federal Government takes a critical view of the plan for a standstill period to be introduced. This would slow down the legislative process and add more red tape. Furthermore, the Federal Government has doubts as to whether a standstill period could be introduced under the Services Directive in its current form. The Federal Government is opposed to amending the Services Directive.

Similarly, the Federal Government takes a critical view of the European Commission's statement that failure to notify a provision should result in the provision being void. The Federal Government cannot support that the case-law of the European Court of Justice on the notification procedure pursuant to Directive 98/34/EC (now Directive(EU) 2015/1535) would be applied to services without further reason.

11) Strengthening the Single Market for goods

In principle, the Federal Government supports measures designed to improve the free movement of goods. The Federal Government takes a positive view on the Action Plan to increase awareness of the principle of mutual recognition. Raising awareness within authorities and among market players of their respective rights and responsibilities is a way of improving mutual recognition of products from other Member States. It can also help prevent mistakes from being made. All of this must be without prejudice to quality assurance and i.e. constructional safety.

However, the Federal Government has reservations about the plans for amending Regulation (EC) No. 764/2008 and for introducing a 'voluntary self-declaration' that companies could issue in order to prove that their products are lawfully marketed in another Member State. From the Federal Government's point of view, national authorities must continue to have the right to demand objective proof that the product is lawfully marketed, i.e. statements by the competent authority of the country of origin, purchase contracts, or tax documents. The Federal Government also has reservations about a presumption of compliance of 'self-declarations' which would be binding for the Member State in question. Member States must retain their right to conduct ex-ante approval proceedings for goods that may pose a danger to consumers or to important legal interests.



In the field of food supplements, which is mentioned by the European Commission, the Federal Government would welcome further legal harmonisation.

The Federal Government welcomes the proposals by the European Commission to strengthen market surveillance. Similarly, the Federal Government also supports the initiatives to prevent non-compliant products from entering the market in the first place. However, the Federal Government has reservations about the introduction of an e-compliance system. If such a system were to be deployed, it would need to have sufficient safeguards in place to protect sensitive business data. Much will depend on the details of the proposal.