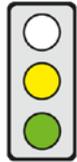


KEY ISSUES

Objective of the Regulation: It will be made easier for citizens and companies to assert their rights derived from the fundamental freedoms.

Affected parties: Citizens and businesses; national authorities.



Pro: (1) The proposed online portal (“digital gateway”) strengthens the internal market because until now, the assertion of Single Market rights has been hampered by the fact that administrative procedures often cannot be carried out by people from other EU countries.

(2) The duty to allow full online implementation of national administrative procedures basically reduces the expense for users when they implement these procedures.

Contra: The duty of full online implementation should only apply to those procedures that can be shown to improve the functioning of the Single Market.

The important passages in the text are indicated by a line in the margin.

CONTENT

Title

Proposal COM (2017) 256 of 2 May 2017 for a **Regulation** of the European Parliament and of the Council **on establishing a single digital gateway** to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012

Brief Summary

► Context and objectives

- The Regulation aims to make it easier for citizens and businesses to assert their rights derived from the fundamental freedoms of the EU - free movement of goods, free movement of labour, freedom of establishment, freedom to provide services and free movement of capital - (hereinafter: “Single Market rights”).
- For this purpose, an online portal will be set up via which citizens and companies can find links which are relevant for the assertion of Single Market rights (Art. 1 (a)).
- In addition, the cross-border implementation of national administrative procedures will be made easier (Art. 1 (b)).

► Online portal (“Single Digital Gateway”)

- The Commission and Member States will establish an online portal (“gateway”) which links citizens and businesses (“users”) to websites of the Member States and the EU (Art. 2 (1), Art. 18), on which the users will find the following:
 - Information on “law relating to the Single Market” (Art. 4 (1) (a) and (2) (a)).
 - This refers to all the laws of the Member States and the EU relevant to users when they exercise their Single Market rights in other EU countries in [situations defined by the Regulation](#) (Art. 2 (2) (a) in conjunction with Annex I).
 - Examples are provisions on identification requirements when travelling in the EU - including those for citizens of third countries - compulsory professional qualifications when starting work, consumer protection laws for operating online shops and procedures for company VAT registration (Annex I).
 - Information on “administrative procedures relating to the Single Market” (Art. 4 (1) (b) and (2) (b)).
 - This refers to all the administrative procedures of the Member States and the EU that citizens or businesses have to implement when they exercise their Single Market rights in [situations defined by the Regulation](#) (Art. 2 (2) (b) in conjunction with Annex I).
 - Examples are registration of place of residence or recognition of qualifications acquired in other EU countries (cf. Annex I).
 - Links to administrative procedures relating to the Single Market insofar as online implementation is possible (Art. 2 (2) (b)).
 - Information and links relating to “online assistance services” (Art. 4 (1) (c) and (2) (c)).
 - This refers to [online portals defined in the Regulation](#) of the Member States and the EU that provide assistance in asserting Single Market rights (Art. 2 (2) (c) in conjunction with Annex III).
 - Examples are single points of contact in the Member States for cross-border service providers and online platforms provided by the Commission for dispute resolution between companies and consumers in online trade (Annex III).

- The gateway contains a search engine for locating appropriate online assistance services (Art. 17).
- The gateway will be integrated into the existing online information portal [“Your Europe”](#).
- ▶ **Requirements applicable to the information accessible via the gateway**
 - The information contained on websites of the Member States and accessible via the gateway must be available in at least one official EU language which is not the language of the respective Member State (Art. 7 (2), 8 (3), 9 (2)).
 - The information about Single Market rights must also be (Art. 7 (1))
 - comprehensive, accurate and necessary for exercising Single Market rights (Art. 7 (1) (a) and
 - kept up to date (Art. (1) (g)).
 - Before users launch an online administrative procedure, they must be given the following information (Art. 8 (1)):
 - available means of redress in the event of disputes (Art. 8 (1) (d)),
 - where relevant, the applicable fees and online methods of payment (Art. 8 (1) (e)),
 - the estimated time required to complete the procedure and any applicable deadlines (Art. 8 (1) (f)) and
 - the languages in which the procedure can be carried out (Art. 8 (1) (g)).
 - Before users request an assistance service, they must be given the following information (Art. 9 (1)):
 - the type, purpose and expected results of the service - e.g. the issue or refusal of a business permit - (Art. 9 (1) (a)),
 - where relevant, the applicable fees and online methods of payment (Art. 9 (1) (c)),
 - the estimated time required to deliver the service or an average response time (Art. 9 (1) (d)) and
 - the languages in which the service can be requested (Art. 9 (1) (e)).
- ▶ **Ban on discrimination in existing online administrative procedures applicable to the Single Market**
 - Where a Member State allows domestic users to conduct an administrative procedure applicable to the Single Market online, it must allow users in other EU countries the same degree of access (Art. 5 (1), 11 (2)). That includes:
 - instructions for completing the procedure must be available in at least one official EU language other than that of the respective Member State (Art. 11 (1) (a)).
 - Form fields that only accept data in particular national formats – such as exclusively national post codes – are not permitted (Art. 11 (1) (b)).
 - Users must be able
 - to identify themselves electronically and to sign documents by electronic means (Art. 11 (1) (c)).
 - to submit evidence in electronic format (Art. 11 (1) (d)).
- ▶ **Full online completion of certain administrative procedures**
 - [13 administrative procedures of the Member States defined in the Regulation](#) must be capable of completion online, i.e. it must be possible for every procedural step to be carried out online (Art. 5 (2), 3 in conjunction with Annex II).
 - This does not apply where the purpose of the procedure - such as the collection of biometric data when applying for a passport - can only be achieved by the physical presence of the user before the competent authority. The physical presence must, however, be limited to what is “strictly necessary” (Art. 5 (4)).
 - The 13 procedures include for example (Annex II)
 - the issue of an ID card, passport or birth certificate,
 - the registration of a motor vehicle and
 - the registration of an employer with the social insurance scheme.
- ▶ **“Once only” principle for data collection in online administrative procedures**
 - The Commission will establish a system whereby evidence, which must be provided during the online administrative procedures defined in the Regulation, can be exchanged electronically EU-wide between the authorities in the Member States (hereinafter: “exchange system”, Art. 12 (1)). This applies to
 - the 13 procedures which must be capable of online completion (Annex II) and
 - online administrative procedures relating to the following EU Directives:
 - Services Directive (2006/123/EC),
 - Directive on recognition of professional qualifications from other EU countries (2005/36/EC),
 - Directives on EU-wide public procurement (2014/24/EU and 2014/25/EU).
 - The authority requiring evidence must request the evidence via the exchange system from the issuing authority when requested to do so by the person obliged to provide evidence (Art. 12 (4)).
 - The issuing authority is obliged to transmit the required evidence electronically insofar as it issues evidence electronically in the home country (Art. 12 (5)).

Statement on Subsidiarity by the Commission

EU-wide centralised access to information and the administrative procedures of the Member States and the EU can only be implemented at EU level. Existing instruments for the EU-wide provision of information and assistance services are not sufficiently linked up EU-wide. Due to the lack of binding EU legislation there are also no uniform quality standards for information and administrative procedures relating to the Single Market. Cross-border action at EU level is the most effective way to reduce the transaction costs of cross-border activities.

Policy Context

The proposal forms part of a package of measures to strengthen the Single Market. This also includes a proposal for a Regulation for an investigative tool for the Single Market [COM(2017) 257; see [cepPolicyBrief](#)], which allows the Commission to require undertakings to provide information, and an Action Plan on the reinforcement of SOLVIT [COM(2017) 255], which mediates on the application of EU law in conflicts between authorities in Member States.

Legislative Procedure

2 May 2017	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union
Open	Entry into force

Options for Influencing the Political Process

Directorates General:	DG Internal Market, Industry, Entrepreneurship and SMEs (leading)
Committees of the European Parliament:	Internal Market and Consumer Protection (leading); Rapporteur: Marlene Mizzi (S&D Group)
Federal Ministries:	Internal Affairs (leading)
Committees of the German Bundestag:	Internal Affairs (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities

Legislative competence:	Art. 21 (2) TFEU (Free Movement) Art. 48 TFEU (Social Security) Art. 114 TFEU (Single Market)
Type of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (Ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The proposed **digital gateway** makes it easier for citizens and businesses to assert their Single Market rights and **strengthens the Single Market because, until now the assertion of Single Market rights has been hampered by the fact that** Member States have different administrative procedures; links to online administrative procedures are difficult to find and such **administrative procedures often cannot be carried out by people from other EU countries**, because they are only available in one language or it is not possible to input data formats from other EU countries.

Making it easier to locate law relating to the Single Market also strengthens the Single Market because the various Member States still have different laws - such as labour law and tax provisions - which European businesses have to know about if they e.g. want to set up an establishment in another Member State. Citizens also have to take account of legislation in other Member States e.g. when they want to work or shop in other EU countries. In such cases, the gateway via which businesses and citizens can find such information, reduces the costs of obtaining information. On the one hand, this enables Single Market rights to be asserted more easily. On the other, there is more likelihood that businesses and citizens will comply with the rules applicable in other EU countries if they can locate them more easily.

Impact on efficiency and individual freedom of choice.

Integrating the gateway into the “Your Europe” information portal is appropriate because it already contains similar information and links - although it is not complete for all Member States.

The fact that information on law relevant to the Single Market applicable in the Member States, and instructions on the implementation of online procedures in Member States, have to be available in an additional official EU language, makes it easier for people from other EU countries to use such services. However, this second official

language should be English in all cases provided it is not the official language of the Member State concerned because English is by far the language which is most widely understood by EU citizens [SWD(2017) 212, p. 4].

The duty to allow full online implementation of 13 national administrative procedures basically reduces the expense for users, when they implement these procedures **but** may lead to substantial reorganisation costs and **should** therefore **only apply to those procedures that can be shown to improve the functioning of the Single Market**. It is questionable, for example, whether the proposed online application for passports would actually contribute to an improvement in the Single Market.

Impact on growth and employment

Negligible.

Impact on Europe as a business location

Negligible.

Legal Assessment

Legislative Competency

The Commission's proposal is basically within its area of competence: The EU is empowered to adopt measures for the approximation of legislation in the Member States aimed at achieving the Single Market (Art. 114 (1), sentence 2 TFEU) - i.e. to facilitate the exercise of the fundamental freedoms. The EU has its own competency rules regarding the free movement of labour, in the field of social security (Art. 48 (1), TFEU) and for free movement in general (Art. 21 (2) TFEU). These provisions also allow the EU to make rules on administrative procedures in the Member States provided they do not infringe the basic responsibility of the Member States to implement administrative procedures. The proposed Regulation complies with this because it only relates to the method of implementing administrative procedures in the Member States whilst implementation itself remains the responsibility of the Member States.

The measures in the Regulation make it easier for citizens and businesses to carry out activities across borders within the EU and thus to assert rights derived from the fundamental freedoms or the general right to freedom of movement. The individual activities to which this applies are defined exclusively in the Regulation (Annex I and II). The activities referred to, for which information has to be made available online, and the administrative procedures that have to be digitised, are closely connected to the exercise of the fundamental freedoms and the general freedom of movement and are therefore covered by the said competences. This does not, however, cover trips made inside the EU by citizens of non-EU countries about which information also has to be made available online because the fundamental freedoms and the general freedom of movement only protect EU citizens and not citizens of non-EU countries. The duty of Member States to provide online information about documents requested by citizens of non-EU countries when travelling in the EU, is therefore unlawful due to a lack of competence.

Subsidiarity.

The principle of subsidiarity is complied with.

Proportionality with respect to Member States

EU measures must be proportionate with respect to Member States (Art. 5 (4) TEU in conjunction with Art. 5, sentence 5, Protocol No. 2 to TFEU) i.e. inter alia the costs incurred by Member States must be proportionate to the expected benefit of the measure.

The duty of Member States to allow administrative procedures for issuing identity cards or passports to be completed online is disproportionate and therefore unlawful because it may involve substantial costs for the Member States but its impact on the exercise of freedom of movement will at best be slight. This is because the ability to obtain an identity card or passport from another EU country, only affects cases where freedom of movement has already been exercised and plays no role in the preparation and implementation of cross-border activities in the Single Market.

Compatibility with EU Law in other Respects

Unproblematic.

Conclusion

The digital gateway strengthens the Single Market because until now, the assertion of Single Market rights has been hampered by the fact that administrative procedures often cannot be carried out by people from other EU countries. The duty to allow full online implementation of national administrative procedures basically reduces the expense for users. They should, however, only apply to those procedures that can be shown to improve the functioning of the Single Market.