

Request by the Dutch, Belgian, Croatian, Czech, Danish, Luxembourg and Slovak delegations for an AOB agenda item for the Competitiveness Council on 24 May 2024

Information by the delegations on the need to eliminate territorial supply constraints on the Single Market.

Territorial supply constraints: Different prices within the EU for identical products

Different prices for identical products within the European Union? As highlighted by Enrico Letta in his recent report on the future of the Single Market, the European Union should take action if these price differences are attributable to territorial supply constraints (TSCs).

TSCs refer to constraints that hinder retailers in sourcing products from the member state of their choice at the best possible market conditions. Think for example of producers and wholesalers in member state A structurally refusing to supply a retailer in member state B. These producers and wholesalers in A structurally refer to a national distributor in B, where the purchasing price of identical products is higher. These higher purchasing prices may spill over into higher consumer prices. This fragmentation of the Single Market furthermore negatively impacts the range of products that can be offered in member states.

TSCs: Fragmentation of the Single Market

The free movement of goods and services are fundamental freedoms within the European Union. Goods must be able to circulate freely within the European Single Market without businesses and consumers experiencing trade barriers.

Removing trade barriers should therefore be a key priority. This helps in keeping consumer retail prices for food and non-food products **fair**. As a result, unjustified price differences for a broad range of frequently used items such as canned vegetables, laundry detergent, or tools can be prevented.

We warmly welcomed the Commission study of 2020¹ which estimated that the issue of TSCs costs EU consumers more than €14 billion a year. This study specifically concluded that the presence of TSCs fragments the Single Market. It also highlighted that the impact is significant for retailers and wholesalers that aim to engage in parallel imports, but are hampered to do so. For example, due to a lack of strong negotiating power. Moreover, differentiation of products in terms of packaging is mentioned as a related practice making TSCs possible.

Addressing TSCs: possible ways forward

The aforementioned study and other recent signals² clearly highlight the need for a European solution. We encourage the European Commission to:

1. **prohibit unfair practices in B2B relations** which discriminate a retailer on the basis of its place of establishment through existing or new common EU instruments of rules;³ and
2. investigate the extent to which manufacturers use differentiated languages on labels and packaging to justify why the same products cannot be sold in all member states. In case TSCs are prohibited, other (national) obligations may in fact still prevent selling a product from one member state in another. In this regard, **an examination of opportunities and risks related to digital labelling** is recommended.

¹ European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (2020). *Study on territorial supply constraints in the EU retail sector: final report*, Publications Office. <https://data.europa.eu/doi/10.2873/59256>

² See for example: Dutch Ministry of Economic Affairs and Climate Policy (2023, November 27). *Territorial supply constraints*; Secretariaat-Generaal Benelux (2018, February), *Territoriale leveringsbeperkingen in de detailhandel in België, Nederland en Luxemburg*. <https://www.benelux.int/nl/publication/territoriale-leveringsbeperkingen-in-de-detailhandel-in-belgie-nederland-en-luxemburg/>

³ For example under competition law.