

THE IMPACT OF
THE **EUROPEAN
SINGLE MARKET**
ON MALTESE
BUSINESSES

NOVEMBER 2019



Acknowledgments

This study was conducted by Grant Thornton Malta, who also collected feedback from stakeholders and drafted the report.

The MBB wishes to express its sincere gratitude to the Malta Chamber Economic Groups and Business Sections and the Malta Hotels and Restaurants Association Council for their contribution in the consultation process, the survey participants, as well as Jobsplus for providing us with the necessary data.



FOREWORD

It is fair to say that the creation and functioning of the Single Market is one of the greatest achievements of the European Union. The implementation of the four freedoms across such a diverse market is unique and should be celebrated.

The Single Market provides the foundations on which the EU's economic competitiveness must be built. Businesses require a solid Single Market in terms of internal homogeneity of rules and external strength in relation to global competition, opportunities and challenges. Economic stability is also a pre-requisite to the EU's competitiveness and prosperity.



It is easy to forget, but the reality is that when Member States signed up to the EU, and the Single Market, they ceded some of their sovereignty in pursuit of a market of 500 million people. This was necessary in order to introduce measures which would allow citizens and businesses to move cross-border with ease - as though doing so in their own country. The benefits of that have been apparent from the start.

Despite the obvious benefits to Malta and its businesses, we have seen that the Single Market has not been immune to the distorted notion of nationalism and protectionism that has taken over the world. Several barriers remain to our businesses, which hinder access to the Single Market. This has direct implications on the freedom of movement which has benefited so many citizens and businesses, and thus negatively affects the proper functioning of the Single Market.

This fact had become increasingly evident throughout the last legislative cycle. We are seeing our businesses struggling to exploit the full potential of the Single Market, since they are continuously faced with challenges stemming from excessive administrative procedures to access markets across borders, to legislative barriers.

As such, we believe that the time to address these issues could not be more opportune than with the changing of the guard in the European institutions after the 2019 MEP elections and the new Commission that shall shortly come with it. Indeed, the Commission itself is undergoing a period of receiving feedback from stakeholders, who in turn are also undertaking their own analysis on the functioning of the Single Market. As the Malta Business Bureau, we felt it was of utmost importance that Maltese businesses are represented in this process.

With this in mind, and on the occasion of the 15th year of our membership in the European Union, the MBB has undertaken a comprehensive study carried out by Grant Thornton Malta, on the effect of the Single Market on Maltese Businesses. Our report provides tangible evidence showing how much Maltese businesses have benefitted within the Single Market, while also pointing out the administrative and legislative burdens they face in operating within it. In addition, we have strived to offer suggestions to decision makers to alleviate these burdens on businesses and to ensure that local businesses get the very most out of the Single Market.

This publication is a summary of the full report. You are invited to access the full report from the MBB website: www.mbb.org.mt

Simon De Cesare
President
Malta Business Bureau

The background features a dark blue field with a grid of light blue stars. A yellow horizontal band is positioned across the middle. A yellow outline of the number '1' is located in the upper right. A light purple vertical bar is on the left, and a light blue vertical bar is on the right.

INTRODUCTION

STUDY BACKGROUND

In May 2019, Malta commemorated fifteen years since becoming a member of the European Union (EU). This gave Maltese businesses and consumers access to the European Single Market which consists of more than 500 million consumers and 20 million enterprises.

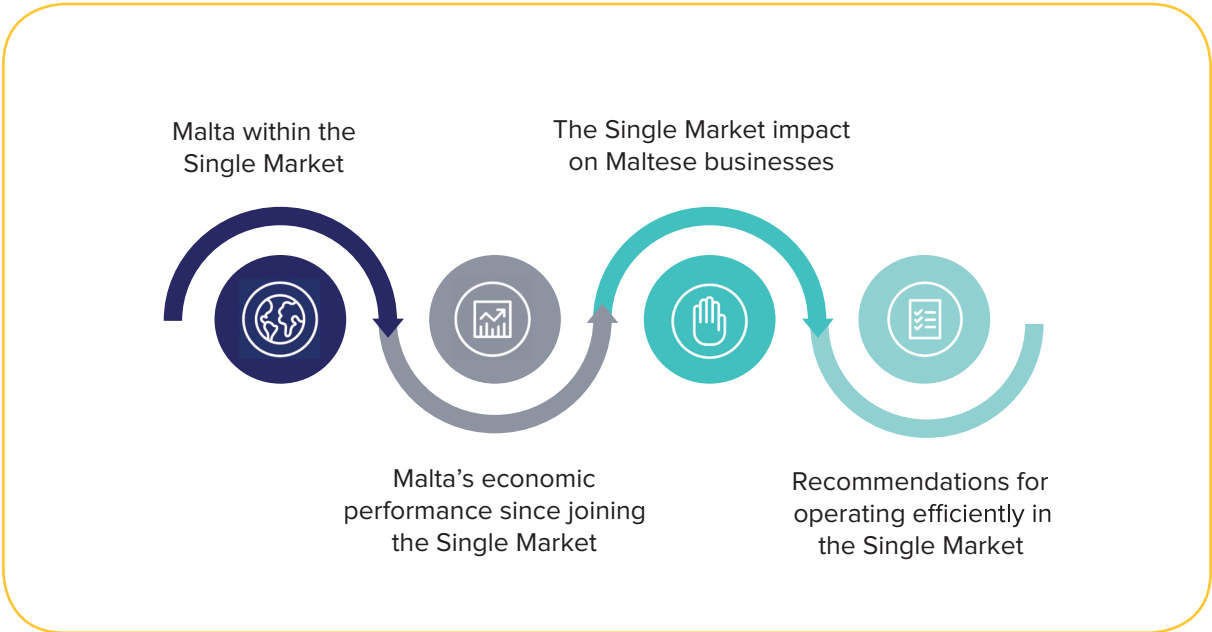
On paper, the Single Market refers to the EU as one territory, without any internal borders or other regulatory obstacles to the free movement of goods, services, capital and people. This ought to stimulate competition and trade, improve efficiency, raise quality, and cut prices; ultimately fuelling economic growth and improving the everyday life of European businesses and consumers.

In practice, however, several barriers to the freedom of movement remain in place. In some cases, this is due to inadequate EU legislation or improper implementation of EU legislation at a national level; while in other cases it is due to protectionist policies by national governments in areas not covered by EU legislation. These constitute significant bottlenecks to cross-border business within the EU and, in this sense, the Single Market is imperfect, and remains work-in-progress.

STUDY OBJECTIVES

Against this background, and in an attempt to inform future policy decisions at national and EU level, the study has the following objectives:

1. To assess how the Single Market impacted Maltese businesses;
2. To identify key challenges faced by Maltese businesses when participating in the Single Market; and
3. To identify gaps at national and EU level in order to restructure business access to the Single Market, while proposing a way forward.



THE EUROPEAN SINGLE MARKET

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Article 3 of the 1957 Treaty of Rome, which established the European Economic Community (EEC), says:

“The activities of the Community shall include... the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods...; the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital.”

These four freedoms remain at the very heart of the Single Market. They were meant to eliminate, or reduce, trade barriers in order to reduce structural imperfections in European markets. They were intended, and expected, to increase the intensity of competition between the firms serving the market, and to consequently reduce price-cost margins to the benefit of consumers, and to trigger industrial restructuring that would lead to greater specialisation and exploitation of economies of scale.

The EU’s main tools to improve its functioning are based on the Treaty for the Functioning of the European Union (TFEU) which establishes that the Union can draft its own binding legislation in the form of ‘regulations’ and ‘directives’. While the former are legal acts that are directly applicable throughout all EU Member States (and therefore homogeneous in their application across Member States), directives simply lay down certain results that must be achieved, with each Member State free to decide how to transpose directives into national laws. Since directives are not directly applicable, and the onus is on the governments of the Member States to ensure the correct implementation of directives, different interpretations across different Member States arise, which in some cases result in fragmentation across the EU.



Freedom of movement of goods

Aims at ensuring the free movement of goods within the market, a high safety standard for consumers, and the protection of the environment.



Freedom of movement of services

Relates to two aspects; the right to open a business in another EU Member State and the right to provide services without any barriers.



Freedom of movement of capital

Aims at creating an integrated and efficient financial market, where companies can invest in and own other European companies and raise money where it is cheapest.



Freedom of movement of people

Aims at creating an environment where EU nationals enjoy equal treatment in access to employment, working conditions and all other social and tax advantages when seeking employment in another EU and EEA

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**MALTA WITHIN
THE EUROPEAN
SINGLE MARKET**



Following a lengthy application process, Malta joined the EU and the Single Market in 2004. The strong exportation and importation of services, together with strong inward investment and migration, suggest that the country integrated well into the Single Market.

THE FOUR FREEDOMS

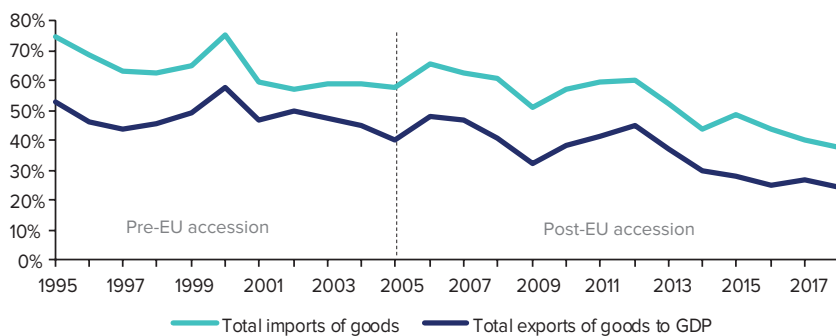
Freedom of movement of goods

Imports and exports of goods as a percentage of the country's Gross Domestic Product (GDP) declined since EU membership. This may be counter-intuitive as the Single Market ought to have facilitated rather than restricted trade in goods. However, it is largely a reflection of an economy that over the years increased its reliance on the services sector. In fact, when analysed in value (rather than percentage) terms, between 2004 and 2018, the annual growth rate of imports of goods averaged 4.1%. However, the comparable growth rate for exports was more moderate at 3.3%; partly reflecting the restructuring of the manufacturing sector due to the removal of tariff protections following EU accession. While these trends suggest moderate integration in terms of the free movement of goods; Malta's openness to international trade (as measured by the ratio of the sum of exports and imports to GDP) remains in line with the EU average.

Freedom of movement of services

Both exports and imports of services recorded significant growth in the period following Malta joining the Single Market. These developments were primarily driven by activity related to online gaming and financial services, but more recently also relating to professional services and IT. It is unlikely that such significant growth in exports of services would have been possible had Malta not joined the Single Market. In fact, the intra-EU trade in activities that have driven this growth generally require that the suppliers of such services are domiciled in an EU Member State.

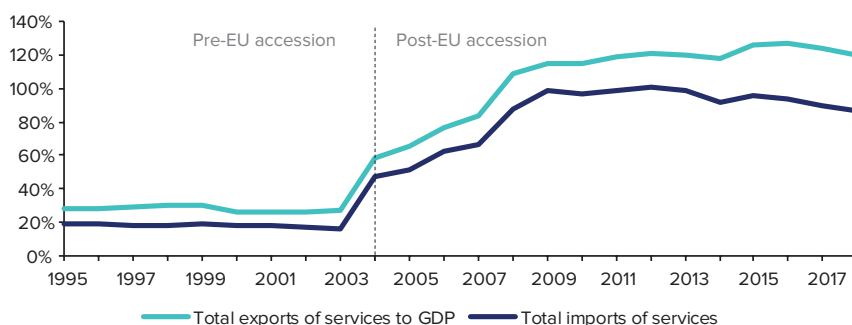
Total Malta imports/exports of goods as a % of GDP from 1995 - 2018



Sources:

1. Eurostat
2. Grant Thornton analysis (2019)

Total Malta imports/exports of services as a % of GDP from 1995 - 2018



Freedom of movement of capital

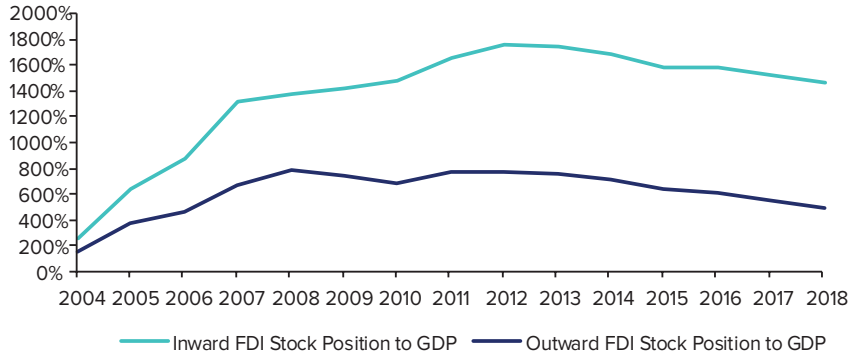
Malta had been a strong recipient of FDI even before EU accession. However, the data presented in the figure below suggests that the country benefitted strongly in terms of FDI in the years following Malta joining the Single Market. And while this may, in part, reflect inflows related to Special Purpose Entities (SPEs), these too create jobs in the local economy. These are typically related to professional services (such as accounting, legal and other consultancy services); which have grown significantly in recent years.

Irrespective of the impact that FDI inflows and outflows may have had on the Maltese economy, the strong inward and outward movement of capital suggests that Malta has integrated well into the Single Market as far as movement of capital is concerned.

Freedom of movement of people

While there was little growth in the employment of EU Nationals in Malta in the early years of EU membership, their number increased significantly over the past few years. Specifically, the data presented in the figure below shows that the share of EU nationals in total employment grew from 1.2% in 2004 to around 14% in 2018. Furthermore, the figure also shows that the growth in the share of EU nationals in total employment outpaced that of third country nationals (TCNs). While the share of TCNs in total employment marginally exceeded that of EU nationals in 2004, by the end of 2018, the share of EU nationals in Malta's total employment was 5.5 percentage points higher than that of TCNs. This is another clear indication of Malta's integration within the Single Market.

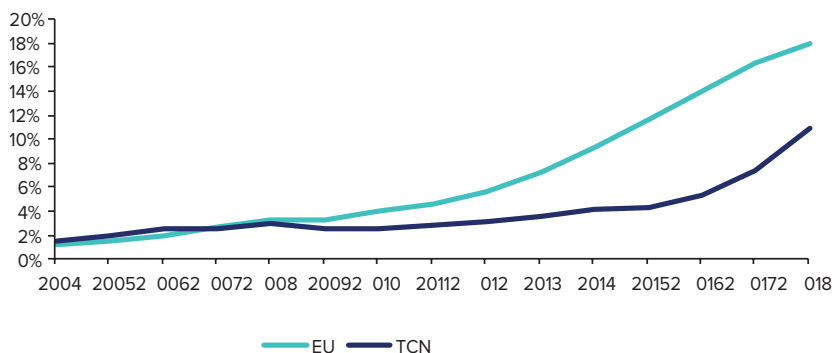
Malta Inward and Outward FDI Stocks as a % of GDP



Sources:

1. NSO
2. Grant Thornton analysis (2019)

EU and Third Country Nationals as a % of Total Employment



Sources:

1. Jobsplus data
2. Grant Thornton analysis (2019)

MALTA'S ECONOMIC PERFORMANCE SINCE JOINING THE SINGLE MARKET

While it is difficult to isolate the impact that the Single Market has had on Malta's economic performance, it is possible to conjecture the impact that it may have had by analysing the economic performance of Maltese businesses since Malta joined the Single Market.

During this period, the country's real GDP grew by an annual average of 4% such that GDP per capita increased from around 50% of the EU-average in 2004 to over 80% by the end of 2018. This relatively fast growth was primarily driven by the Arts, entertainment and recreation sector (which includes online gaming); the Professional services sector; and Public administration, defence, education, health and social work activities. Although some sectors, such as manufacturing and wholesale and retail, were not main contributors to economic growth, the impact that the Single Market has had on their performance is crucial because of their traditionally large contribution to the economy.

We summarise the sectoral economic analysis on the next page. We show each sector's contribution to Malta's economic growth, the perception of the majority of the businesses in the sector of the impact of the Single Market, as well as the Single Market's impact on competition and administrative burden in the respective sector. The analysis is based on administrative data published by the National Statistics Office, a survey carried out with Maltese businesses (henceforth the 'Survey'), and a stakeholder consultation exercise with a number of business representatives. The key characteristics of the Survey and the Stakeholder consultation are summarised below.

SURVEY WITH MALTESE BUSINESSES

As part of this exercise, we carried out a survey with Maltese businesses to shed light on Maltese businesses' perception of the Single Market. The sample's key characteristics are reported below for ease of reference:

- 150 complete responses by Maltese businesses;
- Representative of various sectors of the Maltese economy;
- Representative of businesses of varying sizes (i.e. includes micro, small, medium and large businesses);
- Over 67% of respondents reported that their business was incorporated prior to Malta officially joining the Single Market in 2004.

STAKEHOLDER CONSULTATION

Stakeholder consultations were also held to encourage information exchange and open discussion on how Maltese businesses have been affected by the Single Market. Feedback was received from business representative of various sectors, including:

- Financial services;
- Manufacturing;
- Wholesalers, retailers and importers;
- Accommodation and restaurants; and
- Others

The table below summarises the sectoral analysis. 'Positive' and 'negative' refer to the perception of the majority of respondents from the sector; while the 'tick' in the other columns represents the respective sector's key challenges/concerns.

Sector	GVA Growth on average per year from 2004 - 2018	Single Market impact	Rise in national competition levels	Rise in European competition levels	Impact of increased competition levels	Unusual testing, certification and approval procedures	Additional costs to provide products/services to Member States
Manufacturing	2.7%	Positive			Negative	✓	
Wholesale and retail trade	5.4%	Positive	✓	✓	Negative		✓
Professional services	10.4%	Positive	✓		Positive		
IT and communications	9.0%	Positive	✓		Positive		
Accommodation and food services	6.4%	Positive	✓	✓	Positive/negative		
Construction and real estate	3.0%	Positive			Positive/negative		✓
Agriculture, forestry and fishing	2.0%	Positive	✓	✓	Negative	✓	✓
Education, health and public administration	6.1%	Positive	✓		Positive		
Arts, entertainment and recreation	25.0%	Positive	✓	✓	Positive/negative		✓
Other services	9.8%	Positive			Positive/negative	✓	✓

Notes:

1. A barrier is identified as being 'major' if 30% or more of the respondents operating in the sector identified the barrier as a concern.
2. Cross-border transactions include inbound and outbound transfers of property, stock, as well as financial and commercial obligations between related entities that are resident or operate in different tax jurisdictions.

Ineffective enforcement of EU law at national level	>	>	>	>	>	>	>
inefficient implementation of legislation	>	>	>	>	>	>	>
Being wiped out by competition	>	>	>	>	>	>	>
Excessive legislation	>	>	>	>	>	>	>
Complex tax rules	>	>	>	>	>	>	>
Application of business licenses or permits in other Member States	>	>	>	>	>	>	>
Large amounts of paperwork	>	>	>	>	>	>	>
Environmental, health and safety standards	>	>	>	>	>	>	>
Regulations protecting public interest and/or consumers	>	>	>	>	>	>	>
Authorization and/or licenses for access to markets	>	>	>	>	>	>	>
Difficulty hiring workers	>	>	>	>	>	>	>
Language barriers and issues with translation	>	>	>	>	>	>	>
Lack of harmonization of legislation on cross-border transactions	>	>	>	>	>	>	>

THE EUROPEAN SINGLE MARKET IMPACT ON MALTESE BUSINESSES

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While it is difficult to isolate the impact that the Single Market has had on Maltese businesses, we sought to assess it by asking a targeted group of Maltese businesses about their perception of how the Single Market affected their business.

The majority of the 150 businesses responding to the survey indicated that they are 'better off' since Malta joined the Single Market. Of these, 82% indicated that they are 'better off' due to access to the Single Market. However, a portion of respondents indicated that they are not 'better off' – a perception prevalent in the wholesale & retail sector and the manufacturing sector.



of survey respondents indicated that they are better off since Malta joined the Single Market



of survey respondents that are 'better off' indicated that they are better off *due* to the Single Market



of survey respondents from the manufacturing sector indicated that they are not better off since Malta joined the Single Market



of survey respondents from the wholesale and retail sector indicated that they are not better off since Malta joined the Single Market

Although the majority of respondents to the Survey report that joining the Single Market has generally been beneficial to their business, they also report that it has brought about several challenges. These have been broadly categorised into the following:

- 1. (remaining) barriers to trade
- 2. increased competition
- 3. administrative burden
- 4. size and insularity
- 5. legislative issues

BARRIERS TO TRADE

While the main aim of the Single Market project was to eradicate all barriers to trade, several barriers remain:

28% of respondents that conduct business within the Single Market indicated that they are facing barriers to trade.

The most common barriers faced by Maltese businesses are:

- Language barriers;
- Costs to provide products and services to other member states;
- Unusual testing, certificated or approval procedures that would need to be attained;
- A general lack of harmonisation of legislation on cross-border transactions.

29%

of **micro** businesses are experiencing barriers when trading with other participating Member States, with the majority of firms operating in the wholesale and retail trade sector. Language barriers and issues with translation, seem to be the most prominent barriers.

33%

of **small** businesses are experiencing barriers when trading with other participating Member States, with the majority of firms operating in the wholesale and retail trade sector. Additional costs to provide products or services to other member states, seem to be the most prominent barriers.

26%

of **medium-sized** businesses are experiencing barriers when trading with other participating Member States, with the majority of firms operating in the manufacturing sector. Testing, certification or approval procedures seem to be the most prominent barriers.

10%

of **large** businesses are experiencing barriers when trading with other participating Member States, with the majority of firms operating in the manufacturing industry. Costly arrangements for cross-border transactions seem to be the most prominent barriers.

The bad news for Malta is that a larger portion of smaller businesses experience these barriers to trade within the Single Market (see infographic above). Respondents who indicated that they are currently experiencing barriers within the Single Market report that the persistence of the barriers is due to the lack of uniformity of rules across Member States (44%), and legislation being too complex and burdensome (43%).

INCREASED COMPETITION

Since the Single Market project was intended to increase competition, it is no surprise that most survey respondents whose businesses were established prior to 2004 experienced higher levels of competition since Malta joined the Single Market:

65% of survey respondents whose businesses were established prior to 2004 experienced higher levels of competition at a **national level**

55% of survey respondents whose businesses were established prior to 2004 experienced higher competition at a **European level**

While medium- and small-sized businesses report a more significant increase in competition at the national level; large businesses report an increase in competition at both national and European levels.

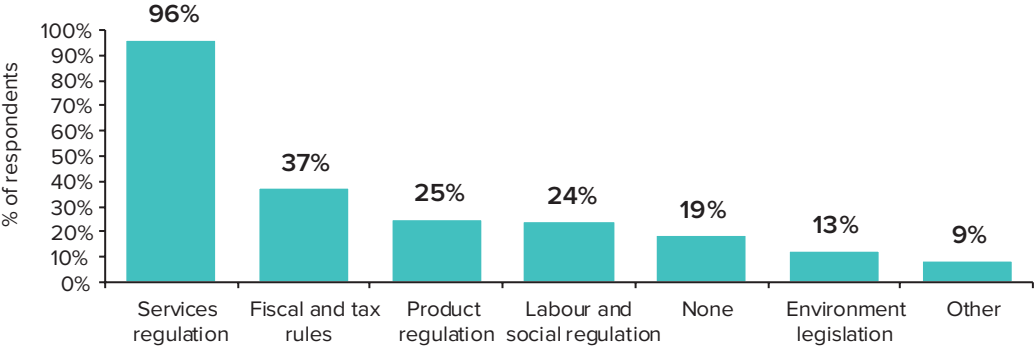
The majority of these businesses report having been both positively and negatively affected by the Single Market. The positives relate to access to a larger market and expanded business, while the negatives primarily relate to loss of market share and profits as a result of increased competition.

There is, however, some asymmetry in the way in which businesses of different sizes have been impacted by the increased competition. While large, medium and small business reported both positive and negative impacts from increased competition, the majority of micro businesses reported negative effects.

ADMINISTRATIVE BURDEN

43% of survey respondents indicated that they are subject to large amounts of paperwork by national and/or European authorities when conducting business locally and/or in the EU; but 39% of respondents indicated that they are currently not subject to any administrative burden. The burden exists across businesses of all size (see infographic on the next page); and, in particular, 96% of businesses reported wanting simplification of the Services Regulation (see figure below).

Aspects of administrative procedures respondents would like simplified



65%

of micro businesses have been subject to administrative burdens by national or European authorities when conducting businesses locally and in the Single Market

55%

of small businesses have been subject to administrative burdens by national or European authorities when conducting businesses locally and in the Single Market

54%

of medium-sized businesses have been subject to administrative burdens by national or European authorities when conducting businesses locally and in the Single Market

70%

of large businesses have been subject to administrative burdens by national or European authorities when conducting businesses locally and in the Single Market

They alluded to aspects such as:

- the need to define a standard for all services at an EU level to eliminate disparities in standards across different Member States;
- the need for Services legislation to factor in national economic climate during transposition and implementation; and
- the introduction of a single EU gaming license that can be utilised across all EU Member States in order to be able to access new markets and thus a larger consumer base.

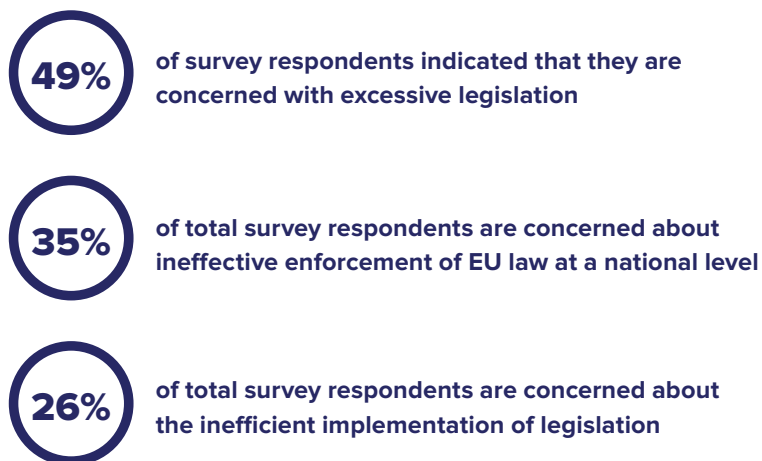
SIZE AND INSULARITY

Malta's smallness and insularity were always going to be a challenge for the functioning of Maltese businesses inside the Single Market. High transportation costs relative to those faced by other businesses in mainland Europe remain a concern, as does the 'one-size-fits-all' approach at times adopted by the EU. While the former is reported to be more problematic for the manufacturing and wholesale & retail trade sectors, the latter is more of a concern for the accommodation & food services sector and the wholesale & retail trade sector.

If we take GDPR as an example, which came into force in May 2018, all companies operating within the Single Market, as well as all companies targeting customers within the Single Market, had to alter policies and procedures, as well as amend company operations, in order to be compliant with the newly introduced regulation. Many businesses argue that large companies can sustain increased costs relating to the implementation of new legislation better than small businesses can.

LEGISLATIVE ASPECTS

The Survey also revealed many Maltese businesses' concerns about several aspects of legislation:



The stakeholder consultation meetings revealed that several sectors were facing issues arising from the transposition of directives at a national level. It was reported that Malta tends to transpose directives to the “full extent” – a concept known as ‘gold-plating’.

In particular, businesses complained that government:

- often extended the scope of the directive;
- added regulatory requirements beyond what is required by the directive in question; not taken (full) advantage of any derogations;
- retained Maltese national regulatory requirements that are more comprehensive than is required by the directive in question;
- used implementation of a directive as a way to introduce national regulatory requirements that actually fall outside the aim of the directive;
- implemented the requirements of the directive earlier than the date specified in the directive;
- applied stricter sanctions or other enforcement mechanisms than are necessary to implement the legislation correctly.

This approach has often resulted in more stringent regulation and higher costs than necessary for local operators, causing a competitive disadvantage.

RECOMMENDATIONS

5



RECOMMENDATIONS

On the basis of the identified challenges, we propose a set of recommendations aiming to enable Maltese businesses to operate more efficiently within the Single Market:

Recommendation 1

Set realistic cross-border public procurement targets at EU and Member State level.

Area: Public procurement

Target level: EU

Addresses: barriers to trade, unfair competition

Proposal: Since 2014, the European Commission has been very active in the area of simplification and modernisation of EU public procurement. However, there still exist a number of practical issues that limit the ability of SMEs to participate in cross-border competitive tenders. Notably, the participation of Maltese businesses in foreign public procurement is low when compared to the participation of foreign companies in competitive bidding for public tenders in Malta. While this may be related to the country's geographic location and/or the lack of economies scale that are required to cater for large-scale projects, there also exist clauses or rules "hidden" in tender documents that prohibit foreign and/or small suppliers or service providers from bidding for public tenders. For example, some governments impose restrictions on businesses to supply products or services using only local inputs; or require foreign businesses to own resident subsidiaries; or require foreign firms to submit the final report in a specific language. Rather than addressing these specific barriers, the EU may seek to encourage cross-border procurement by setting voluntary quantitative targets for cross-border procurement at both EU and Member State level.

Recommendation 2

Address problems with banking for companies to ensure that Malta remains an attractive host-country for foreign direct investment.

Area: Cross-border banking

Target level: EU / national

Addresses: barriers to trade

Proposal: Malta's accession into the EU made it an attractive host for multinational companies operating in many different sectors. However, these companies are facing difficulties related to opening a bank account in Malta – primarily because domestic banks have had to drastically change their risk appetite due to pressure from correspondent banks in response to increasing Anti-Money Laundering legislation both at the EU and global level. Over recent years, de-risking exercises by Malta's major domestic banks led to the termination of services for dozens of companies operating in Malta, particularly those operating in the iGaming industry and those with an international ownership dimension.

This does not only put the future of these companies in question but is also a significant deterrent for companies considering setting up in Malta. While neither national governments nor the EU can interfere with banks' risk appetite, cross-border banking may offer an alternative solution.

For example, article 73 (1) of the Companies Act provides that "The consideration for the acquisition of shares in a company whether on the original subscription or a subsequent issue, may only consist of assets capable of economic assessment, and furthermore, future personal services and in general any undertakings to perform work or supply services may not be given by way of consideration."

The law lays down no requirement, that any evidence that such consideration has in fact been received by the Company, be provided. However, as a matter of practice, the Malta Business Registry will only register a company unless it has been provided with evidence that the paid-up share capital of the company, as specified in the Memorandum and Articles of Association has indeed been paid. Historically, banks were forthcoming to accept a deposit of funds and provide a deposit slip confirming the afore-referenced deposit of share capital. However, as at present, due to the prevailing banking situation, shareholders and corporate services providers are having to resort to alternative channels to provide evidence of paid up share capital. Businesses have sought to overcome this issue by depositing funds in accounts held with E-Money Institutions. The Malta Business Registry has thus far refused to accept deposit slips issued by these institutions, despite the fact that such institutions are authorised to carry out payment services including the operation of a payment account. A shift in this approach could substantially ease the banking problem the country is currently facing.

The issue of banking is predominantly a result of the current challenges small Member States face when it comes to correspondent banking. Malta should ensure this issue is put on the EU's agenda to ensure small Member States are not unfairly treated as a result of their size.

Recommendation 3

Ensure that market surveillance units at EU and Member State level have the capacity to effectively monitor and enforce the requirements of EU regulations.

Area: Market surveillance

Target level: EU / national

Addresses: enforcement, unfair competition

Proposal: Market surveillance should be in place to ensure that only goods that meet EU health and safety standards enter Malta; to ensure that proper labelling and language restrictions on packaging are adhered to; and to ensure that goods do not enter Malta undeclared within the Union. However, the enforcement of EU rules, such as consumer protection or product safety, is a challenge; and national market surveillance authorities have weak incentives to act against non-compliant companies in their own jurisdiction. Therefore, Malta should push for improved capacity of national market surveillance units so that they can properly monitor and enforce the requirements of EU regulations. This could go a long way in ensuring that these authorities have the ability to impose dissuasive penalties and exchange information more effectively.

Recommendation 4

Establish timeframes for follow-up on recommendations/opinions emanating from tools that are intended for ongoing case-by-case evaluation of existing pieces of legislation (such as the REFIT Programme).

Area: Simplification and harmonisation of existing regulation

Target level: EU / national

Addresses: barriers to trade, administrative burden, legislation

Proposal: Many regulations are too complex to be understood by SMEs. When legislators draft a new law, they should think about people and businesses affected by that legislation. Businesses' divergent views on whether legislation is an obstacle or a benefit suggest that it is only by seeking their views on specific pieces of legislation that concrete areas for simplification can be identified. These should be

carried out at both EU and Member State level. The EU Regulatory Fitness and Performance Programme (REFIT) is intended for precisely this purpose; with special attention as to how SMEs can be disproportionately affected by the burden of implementing EU rules.

Reviews of the REFIT initiatives in 2019 showed that REFIT opinions often take several months to be formed practically rendering the process redundant. Eventually, when the opinion is issued it is impossible to distinguish between the REFIT achievement and the inevitable updating of the laws triggered through other channels available. Some observations have indicated that the REFIT mechanism is lacking in tangible progress. This suggests that certain inefficiencies and bureaucratic behaviour should be corrected to improve efficiency. REFIT should consider imposing timelines on committees within the European Commission for the adoption of its opinions.

A REFIT platform brochure published in 2017 indicated that out of a total of 272 submissions from all Member States, Malta only accounted for 2 of these submissions since the programme's inception, which suggests that awareness is lacking. Publicising the use of the REFIT programme would enhance its reach, contributing to less burdensome implementation processes in Member States.

Recommendation 5

Improve the effectiveness of tools intended to help businesses and citizens deal with unfair rules/decisions and discriminatory red tape when working in another EU country (such as the SOLVIT), while increasing the awareness of Maltese businesses on the availability of such problem-solving mechanisms and other information portals.

Area: Problem-solving mechanisms

Target level: EU / national

Addresses: barriers to trade, administrative burdens, legislation

Proposal: SOLVIT is a problem-solving service provided by the national administration in each EU country, as well as in Iceland, Liechtenstein and Norway. It aims to find solutions within 10 weeks – starting on the day the case is taken on by the SOLVIT centre in the country where the problem occurred. To ensure effectiveness of the tool, we suggest giving an economic operator the possibility to request the SOLVIT Home Centre to ask the Commission to give an opinion to assist in solving the case, rather than letting the Home Centre decide whether to ask the Commission unilaterally. The Home Centre may refuse this request but must provide justification for its refusal. If, however, the Commission is asked to give an opinion, the Commission should enter into communication with the operator within 30 working days.

In addition to SOLVIT, there are several resources available for businesses operating in the Single Market. The Your Europe portal, as well as Points of Single Contact are tools that businesses and/or citizens may use to either lodge informal complaints or gain information on how to complete administrative procedures online. However, survey respondents indicated that only 15% are aware of SOLVIT and only 29% are aware of Your Europe portal and/or Points of Single Contact. Awareness of the availability of resources may lead to improved efficiency and reduction in administrative burdens.

Recommendation 6

Ensure effective use of resources for the transposition of EU directives such that Malta makes efficient use of derogations.

Area: Implementation of legislation

Target level: national

Addresses: administrative burden, legislation

Proposal: Incorrect implementation of directives often creates a competitive disadvantage for businesses. Government should ensure that it efficiently utilises its resources to properly evaluate how the implementation levels of directives would affect the competitiveness of Maltese businesses, and avoid simply transposing directives verbatim with no consideration for the local context.

By way of example, over the years Malta has often failed to consider possible derogations in directives. One example is when Malta failed to adopt the derogation allowing for Specialised Bank license authorisation. Lithuania was one of the countries who took advantage of this derogation making it possible to obtain a Specialised Bank License with a minimum equity capital requirement of €1,000,000. These specialised banks can offer lending, payment services, receive deposits, exchange currency, issue e-money and guarantees, among others. Revolut Technologies Ltd. was one of the major companies that was attracted to the Specialised bank license in Lithuania. Such a derogation could have proved especially attractive in the face of 'Brexit', as many UK based financial institutions look for alternative jurisdictions in which to establish themselves to ensure they maintain their passporting rights post Brexit.

Recommendation 7

Carry out a study to identify the barriers that have prohibited Malta from taking advantage of the internationalisation of capital markets.

Area: Internationalisation of capital markets

Target level: national

Addresses: barriers to trade

Proposal: Internationalisation of capital markets refers to the issuers, investors, brokers, dealers and marketplaces that cross borders in search of a financial transaction. This is generally deemed beneficial for all participants, including the Member States involved, if they are managed efficiently. However, Malta has not yet managed to capitalise on such opportunities. The successful track record in this area of other small EU Member States, such as Ireland and Luxembourg, suggests that Malta may be well placed to emulate their model.

Recommendation 8

Ensure a cohesive and continuous evaluative process throughout the lifecycle of the legislative process.

Area: Legislative process

Target level: national

Addresses: legislative issues

Proposal: Malta should constantly monitor the impact of legislation both by assessing the potential impact of emerging legislation, whilst also continuing to assess the impact post-facto. In particular, national impact assessments of emerging legislation should include a proportionality estimate of the likely effects which an EU proposal might have on the domestic industry. If conducted in a timely manner, this will help Maltese negotiators understand the potential impact of the proposed legislation; and if the proposed legislation is likely to have a negative impact at the national level, then the national impact assessments can aid in identifying alternative solutions to the proposed legislation. In addition, Government should carry out effective ex-post evaluations of laws and regulations to ensure the achievement of regulatory goals.

Furthermore, consultations with the business community carried out for the purpose of this exercise, suggested that Maltese businesses are not being effectively consulted on legislative aspects. Effective stakeholder consultation can provide valuable insight in to how the proposed legislation will impact the conditions in which Maltese companies operate. The MBB is willing to provide its services to Government in this regard.

Recommendation 9

Ensure that all positions taken by Government in relation to drafting of legislation at EU level are published in detail and in a timely manner on the national online public consultation platform to allow for the provision of feedback and comments by businesses; and make it compulsory for administrative bodies responsible for the draft legislation to react to comments received from stakeholders.

Area: Stakeholder engagement

Target level: national

Addresses: legislative issues

Proposal: Many stakeholders often do not get the opportunity to provide input at the early stages of the policy development and it is not clear how their feedback is being considered. Effective consultations that draw on the experience of businesses and the public should be key for an effective negotiation strategy. For example, in Croatia, major draft regulations are published for consultation on the interactive consultation portal e-Savjetovanja for a minimum of 30 days. The website allows the public to provide general feedback on the draft or to provide comments on the individual articles of a draft regulation. The administrative bodies responsible for the draft legislation are required to respond to all comments. Malta should try to increase its efforts to reach stakeholders and obtain their feedback and contribution on potential legislation by possibly replicating the Croatian model.



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