

EUROPEN's Inputs on EU Single Market Strategy 2025

EUROPEN, The European Organisation for Packaging and the Environment, represents the packaging industry value chain in Europe. Since its creation in 1993, the mission of EUROPEN has been to advance packaging sustainability while preserving the integrity of the Single Market.

EUROPEN believes that the Single Market is the backbone of the European green transition and competitiveness. Safeguarding its integrity and supporting its completion and enforcement are key to realising full circularity, climate neutrality and maintaining the economic viability of the European industry. Only by cutting red tape, dismantling trade barriers and fostering monitoring, implementation and enforcement of the Single Market principles can Europe maintain its competitive edge.

Preserving the functioning of the Single Market is also key to ensure that packaging materials, including secondary raw materials, and packaged goods can move freely across the EU to reach European consumers and businesses. From an environmental standpoint, harmonised rules are essential to improve the sustainability of packaging and its value chain, ensuring that an EU-wide approach to packaging waste prevention, management and recycling is not defeated by unilateral initiatives.

The reflection on the future of the European Single Market as part of the upcoming EU Single Market Strategy 2025 is much welcomed and needed. In view of its preparation, EUROPEN has put forward the following key recommendations:

- The free movement of goods in the Single Market must be improved by full implementation and enforcement of the Single Market principles, supported by more harmonised rules, a strengthening of early warning systems such as the TRIS procedure, as well as timely and effective sanctioning of infringements of internal market rules and the TRIS Directive requirements.
- A Single Market test needs to accompany the adoption of any new EU legislative proposal, to ensure compliance with primary and secondary legislation, and must be based on thorough impact assessments, competitiveness checks and the reduction of unnecessary administrative burdens.
- Political ownership of Single Market principles needs to be ensured across all Commission services, Council formations and national Ministries as well as the Parliament's IMCO Committee, with the goal to have an effective consultation of all relevant services in all phases of a legislative process.¹

Growing fragmentation of the Single Market for packaging and packaged goods

In recent years, the Single Market principles have been put into question by the resurface of technical barriers to trade and the free movement of packaging and packaged goods due to the adoption of unilateral and national measures to the detriment of the principles of competition, proportionality and mutual recognition.

In the case of packaging and packaged goods, divergent national provisions are impacting virtually every economic sector and product's value chains. Disparate national packaging requirements, such as unilateral labelling requirements, impede the use of a single packaging execution and require the redesign of all packaging across the internal market with significant costs, negative impacts on the environment (e.g. destruction of stocks or unsold items) and the adverse consequence of diverting human and financial resources away from other activities intended

¹ This recommendation was also put forward as part of two non-papers supported by different EU Member States. See [here](#) the non-papers on a New Horizontal Single Market Strategy, led by Finland, and supported by 14 EU Member States, and [here](#), a non paper of Austria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden on priorities for the new Commission in the Single Market.

to advance sustainability (such as R&D on eco-design and digital traceability of product information for more efficient recycling).

In addition to labelling, marketing restrictions are especially concerning and remain a widespread practice. Packaging bans represent the most extreme form of waste prevention measures and should therefore be put in place only after proper assessment of their proportionality, including the availability of viable alternatives, non-discriminatory nature and overall impact, for instance, on food availability and wastage². Unilateral packaging bans have been on the rise in the past years³ despite insufficient justifications of the necessity or proportionality of these measures by the proposing Member States. While the upcoming entry into force of the Packaging and Packaging Waste Regulation is expected to create greater harmonisation of packaging rules, especially in the area of labelling, the Regulation also provides significant leeway for Member States to adopt unilateral or more ambitious packaging waste prevention measures⁴. This further underlines the importance of reinforcing the tools to adequately prevent and sanction Single Market infringements⁵.

Recommendations for strengthening the integrity of the Single Market

To halt the fragmentation of the Single Market, EUROPEN puts forward the following recommendations:

1. **Making EU legislation “Single Market proofed”.** Clearly defined and harmonised EU provisions are the necessary first step to avoid the adoption of diverging and disproportionate national measures, which result in unilateral national requirements and EU market fragmentation.
 - The choice of the appropriate legal basis and legal instrument is the first step towards more harmonised implementation of EU legislation, reducing the risks of gold plating and ensuring that EU rules are consistently interpreted and applied in all EU Member States⁶. As highlighted in the Letta report⁷, EU Institutions should unequivocally prioritise the use of Regulations in the formulation of Single Market binding rules, and there should be a systematic preference for utilising Article 114 of the Treaty as a legal basis for both Regulations and Directives⁸.
 - EU rules, in any policy area, need to withstand a Single Market test, which means that they must be designed in compliance with the Single Market principles and support a harmonised implementation of EU legislation across all Member States. This requires enshrining core principles, targets and clear definitions in the body of the legislation or its implementing acts and removing provisions that would grant a “licence” to derogate from EU harmonised rules. The former would help prevent the risk of diverging national measures from occurring in the first place.
 - An effective Single Market screening of all new EU initiatives requires the participation of multiple services, across all EU institutions, at all phases of the European legislative process. This goes from the preparation of the legislative proposal up to the different steps in the co-decision process and final interinstitutional

² In the European Union, around 88 million tonnes of food waste are generated annually with associated costs of 143 billion euros, according to the most recent estimate. Packaging has an essential role to play in the prevention of food waste, protecting products and minimising waste at all stages of the value chain. High-performance packaging solutions and technologies can preserve food safety by minimising sources of contamination and reduce food waste from spoilage. Innovative packaging designs also help consumers buy and use food in portions that match their needs and reduce food waste from leftovers.

³ More recently, Spain and Belgium have proposed the introduction of unilateral packaging bans.

⁴ As an example, Member States will be allowed, under certain conditions, to retain national packaging bans adopted prior to 1 January 2025, as well as to adopt more ambitious or additional reuse targets at national level.

⁵ While sanctioning remains limited (see below), in 2023 the European Commission started an infringement procedure against the French Triman Decree, see [here](#). On 16 December 2024, the European Commission also started an infringement procedure against the Royal Spanish Decree on Packaging and Packaging waste, see [here](#). However, it should be noted that the opening of infringement procedure does not have the effect to suspend national measures, therefore not minimising the negative impacts on economic operators required to comply with unilateral requirements.

⁶ Past experience with the transposition of product-related EU legislation, such as for instance the Single-Use Plastics Directive, prove that there is significant scope for Member States to goldplate at national level when Directives are favoured over Regulations, particularly if those rely on an environmental legal basis.

⁷ “Much more than a market”, Enrico Letta, 2024. The report is available [here](#).

⁸ In relation to this, transforming the TRIS Directive into a directly applicable Regulation, should also be assessed and potentially considered as an opportunity to improve its enforcement in all EU Member States.

negotiations. In practice, to ensure an effective Single Market screening of all new pieces of EU legislation, the Commission's GROW Department, the Parliament's IMCO Committee and the Competitiveness Council should all be actively involved and consulted throughout all the phases of the co-decision process.

2. Effective enforcement of the TRIS Directive⁹. In recent years, several new market barriers have not been detected through the TRIS process, as they were not notified to the EU Commission and put through the proportionality and justification test required by the Treaty, in violation of Article 5 of the TRIS Directive¹⁰ and Articles 34 and 36 TFEU¹¹. In the absence of a Commission's detailed opinion requesting that a Member State takes corrective actions to remove a potential barrier, the TRIS system is *de facto* delegitimised and the Single Market is fragmented as a result.

- The TRIS Directive must be fully enforced to ensure that Member States systematically obey their notifications' obligations. The submission of a formal complaint for infringement of EU law to the European Commission can help holding Member States accountable. However, this is only an *ex-post* mechanism, which does not prevent the introduction of unilateral market barrier infringing the Single Market.
- In the absence of a notification by Member States, national measures should automatically be considered inapplicable, in line with relevant case law and the principle of supremacy of EU law¹².

3. A strengthened TRIS notification process. When Member States fulfil their TRIS notification obligation, the draft national measures that they transmit to the European Commission quickly become obsolete as they are usually amended during the legislative process carried out by national parliaments. Consequently, eventual detailed opinions or comments issued by either the Commission or other Member States, as well as stakeholder comments on the proposed measures, are not taken into full account as part of the final texts adopted at the end of the national legislative process. At times, draft national laws are even adopted prior to the expiration of the standstill period¹³.

- The TRIS notification process must be fully embodied in the national legislative process and based on a two-step notification: *ex-ante*, by making the notification of technical measures to the EU Commission and the respect of standstill periods by Member States an essential step to move forward with national parliamentary debates on draft laws; *ex-post*, by using the TRIS notification for a final evaluation of the full compatibility of national measures with the Single Market principles with a new submission of the final draft legislation, ahead of the final rubber-stamping by national parliaments.
- The TRIS notification system could be further reinforced by ensuring that stakeholders' contributions, as well as the detailed opinions and the comments issued by the EU Commission and the Member States, are easily and readily accessible on the TRIS portal. Ensuring that all contributions are disclosed at an early stage of the notification process can help scrutinize the impact of proposed national technical regulations, foster the timely reaction of economic actors and Member States and reinforce the joint ownership of the Single Market.

4. Effective enforcement of Single Market principles. When Member States comply with the notification requirements of the TRIS Directive, they often receive a green light to go ahead with the adoption of the draft measure even if they fail to provide an adequate justification of its necessity and proportionality, as required by the Treaty of the European Union.

⁹ In relation to this, the EU Commission Report on the Operation of the Single Market Transparency Directive from 2016 to 2020⁹, COM(2022) 481 final, provides an interesting retrospective on the use and effectiveness of the notification procedure, also highlighting the Directive's untapped potential in addressing persisting bottlenecks in relation to the single market and the green transition. See [here](#).

¹⁰ Directive (EU) 2015/1535 foresees a notification procedure whereby Member States are required to notify to the European Commission technical regulations they intend to introduce for products (industrial, agricultural and fishery) and for Information Society services before their adoption. The aim is to ensure that these texts are compatible with EU law and the Internal Market principles.

¹¹ Article 34 TFEU forbids quantitative restrictions on imports and all measures having equivalent effect between Member States, see [here](#). Article 36 TFEU clearly states that national prohibitions or restrictions shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States, see [here](#).

¹² See relevant case law on the TRIS Directive and on Article 34 and 36 TFEU [here](#) and [here](#).

¹³ As an example, Italy recently adopted labelling measures on shrinkflation, despite an EU Commission detailed opinion extending the standstill period. See Notification number [2024/0560/IT](#).

- National provisions, likely to result in barriers to the free circulation of goods across the EU, must be adopted in full respect of the principles enshrined in the Treaty of the European Union, and in particular Article 34, which forbids market barriers, and Article 36, which requires Member States to justify the necessity and proportionality of any national measures that would impede the free movement of goods in the Single Market¹⁴.
- Infringement procedures must be effectively pursued when a Member State fails to adopt corrective measures to remove either the risk of market barrier or the actual barrier when this has already entered into force. The 2023 Annual Report on monitoring the application of EU law demonstrates that infringement cases opened by the EU Commission in the area of Single Market have significantly diminished between 2019 and 2023, with a 60.6% reduction¹⁵.
- Furthermore, infringement procedures need to be completed more swiftly. A recent report from the EU Court of Auditors¹⁶ signals that, while the EU Commission has overall improved its management to detect and correct infringements of EU law, it still takes too long to close infringement cases. This is particularly relevant in the area of the Single Market, given that the opening of a procedure does not suspend the national measure introducing the market barrier and the required compliance by economic operators.
- Finally, cooperative tools, such as the Single Market Enforcement Task Force (SMET), need to be better leveraged, for instance by exploring ways to interact more regularly with the business community, asking for their input on reports or encouraging access to some of Task Force meetings¹⁷, in order to better assess the potential impacts of new Single Market barriers on European businesses and consumers.

¹⁴ The need to better enforce Single Market rules has been more recently recalled by the EU Commission as part of the Communication "The Single Market at 30", COM/2023/162, available [here](#).

¹⁵ See [here](#) for additional details. This is despite the recognised need to improve the handling of infringement cases, as recognised by the Communication "Long term action plan for better implementation and enforcement of single market rules", COM/2020/94 final, available [here](#).

¹⁶ "Enforcing EU law", ECA, 2024. The report is available [here](#).

¹⁷ For additional concrete suggestions on how to improve the SMET, see the recommendations of the European Round Table for Industry [here](#) and [here](#), as well as the analysis of CEPS [here](#).