

High Level Report on the future of the Single Market

Business law regulation

1. Description of the problem

Directly affected parties:

Lawyers

Commercial trainees

Small and medium-sized enterprises

[1 or 2 concrete illustrations / examples, e.g. particularly problematic transposition of a Directive in a certain Member State – 1 paragraph]

- Small and medium-sized enterprises must adapt strategies and processes for their cross-border business activities to five different legal systems
- Lawyers must familiarise themselves with five different legal systems
- Commercial training differs. Cross-border training is impaired due to differing regulations

2. Root causes of the problem

Participants in cross-border trade must inform themselves about five different legal systems in the following areas, as there are no standardised rules.

electronic commerce law
corporate law
collateral security law
enforcement legislation
insolvency law
banking law
financial market law
intellectual property rights
labour law
insurance law
tax law

This results in legal investigation, information and transaction costs, which on the one hand make business activities more expensive, but on the other hand also contribute to the avoidance of cross-border investments altogether. (Scientifically proven, see Prof. Matthias Lehmann, GPR 2017, p. 262 (264), Ribstein/Kobayashi, (1996) 25 The Journal of Legal Studies 131, 136 ff).

3. Future evolution of the problem

The number of business law regulations could increase at European level, as well as at Belgian, Luxembourg, French and German level. The increase in regulations in the period 2014 - 2024 is an indication of this, with the legal investigation, information and transaction costs for small and medium-sized enterprises rising accordingly.

4. Recommendation

Existing Union law, insofar as it is relevant to commercial law, could be summarised in an ambitious codification proposal that bundles the regulations and directives that fall within this area of law, insofar as their content is mandatory, as well as the relevant ECJ case law. The structure of the BGB and HGB could be based on a systematic organisation into 13 books.

In addition to existing EU law, proposals could be formulated for further regulatory instruments under private law, such as the Simplified European Company or the cross-border mortgage. In addition to the existing 27 legal systems, these are intended to create additional regulatory models that can be chosen by economic players. They are fully compatible with current national law, as they are merely optional in nature. For example, the one simplified European company form does not violate the numerus clausus of German company law, as it is an additional company form provided for by law.

The legal research, information and transaction costs of small and medium-sized enterprises would be eliminated or significantly reduced. Lawyers in the Greater Region would not have to rely on knowledge of other legal systems. The cross-border training of trainees in commercial law would not be simplified.

ANNEX 1

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ANNEX 2