



UNION DES ENTREPRISES
LUXEMBOURGEOISES

Remaining barriers to the Internal Market

Most common obstacles and practical examples identified by
businesses in Luxembourg presented at the

Benelux Stakeholder exercise
organised by the European Commission

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Overview

- Top 5 of most important cross-border obstacles for businesses in your country?
- Obstacles when **doing** temporary business across borders
- Obstacles when establishing in another country
- Obstacles when **buying** cross-border goods and services
- Possible ways forward? → Regulatory and/or practical solutions?

TOP 5 of most important cross-border obstacles

1. Posting of workers across “borders”
2. Public Procurement
3. INTRASTAT and European VAT-legislation
4. Fragmentation of national contract laws
5. Problems in the supply of goods / Obstacles in the transport of goods in the internal market

Luxembourg “landlocked” => Focus on neighbouring countries: Germany, France, Belgium

Most important obstacles when doing temporary business across borders (1)

- Regulatory barriers
 - Horizontal issues
 - Posting of workers across “borders” - Different procedures, formalities and definitions (linked to “Administrative difficulties”)
 - Different declaration obligations and formalities per country
 - Existing national exemptions
 - Aspects concerning social security
 - Varying interpretations of European legislation by Member States (“MS”)
 - Period of posting (24 months)
 - Problem in case of multiple postings (short period posting) as e.g. repair work, maintenance or technical controls
 - Aspects concerning income taxation of commuters
 - Different/contradictory interpretation by neighbouring countries of existing double taxation agreements
 - Commuters more easily taxed in the country of residence (+ administrative burden)

Most important obstacles when doing temporary business across borders (2)

- Regulatory barriers
 - Sector-specific issues (construction)
 - Contribution to foreign paid leave fund
 - Different rules from 2 countries applicable to one leave
 - Complex formalities for the employers and double financial obligation
 - Complex formalities for workers employed in Luxembourg (posted to the foreign country) in order to avoid “double taxation”

Most important obstacles when doing temporary business across borders (3)

- Administrative difficulties
 - Horizontal issues
 - Public procurement
 - Sector-specific issues (construction)
 - Pre-qualification procedures
 - Complex formalities for foreign entrepreneurs and complex system of categories
 - Renewal of the request required (e.g. every 5 years)
 - Presentation of equivalent information
 - Non transparency in the decision taking process of (regional / local) authorities, when foreign enterprises present equivalent information (in case of parallel tenders filed by national and foreign enterprises)
 - Market access problems for foreign enterprises due to pre-qualification systems

Most important obstacles when doing temporary business across borders (4)

- Administrative difficulties

- Horizontal issues

- INTRASTAT

- System for the provision of statistical information by enterprises on “dispatches” and “arrivals” of EU goods (since 1993)
 - In the past Member States re-defined their exclusion thresholds; other simplification measures were adopted
 - Problem of separate registration of both “dispatches” and “arrivals”
 - Importance of simplification in “arrival” statistics and implementation of “unique” provision of information (for “dispatches”)

- VAT-Legislation

- Complexity of the European VAT-legislation (variety of specific cases within the framework of transnational operations)
 - Transnational provision of services (e.g. construction activity, property related services): derogations to be applied; large number of details to consider before applying the rules

Most important obstacles when doing temporary business across borders (5)

- **Legal fragmentation (regulatory barrier)**
 - Legal fragmentation due to lack of harmonization of contract law, consumer protection legislation, etc.
 - Enterprises face different national contract legislations while realizing transnational operations
 - Problem of fragmentation of contract law, especially in the context “B2C” (e.g. Rome I Regulation)
 - Enterprises are potentially confronted with 28 legislations (meaning a potential follow-up of 28 different forms of “contracts”)
- **Cultural difficulties**
 - **Language problems**
 - 16% of the enterprises in the skilled craft sector (mainly construction) active in the field of public procurement
- **Standardisation and certification problems** (such as differences in accepted certification, technical standards, etc.)
 - **Technical standards**
 - Entrepreneurs report about specifications (e.g. public procurement) requiring national standards instead of existing European / international standards

Most important obstacles “transport”

- **Road Cabotage**

- The legislation on cabotage limits the number of loadings realized on a territory other than the country of origin
- Consequences: distortion of competition; protection of the national market; bad environmental record (high number of empty runs)
- Luxembourg is highly affected because of its specific geographical situation (transport is “international” *per se*); competitive disadvantage for Lux. transporters (high national social and economic standards, collective agreements ...) through the specific practices of other MS

- **Exceptional 44 tons Transport Limit**

- Certain MS impose a 40 tons limit to transporters of other MS, meanwhile national transporters are authorised a 44 tons limit
- This situation is iniquitous and against the basic principal of free movement in the EU and of harmonization of legislation in the transport sector

Obstacles when buying cross-border goods and services

- **Problems of access to the service/the offer**
 - Problems in the supply of goods in the internal market (“restrictions on the cross-border supply of goods”- “restrictions territoriales”)
 - Certain firms and big suppliers force importers and retailers in Luxembourg (commerce and skilled craft sector) to order through the supply channels and platforms in Belgium
 - Problem: obstacle to the free movement of goods within the Internal Market
 - Result: Artificially high prizes; limited offer to customers; reduced competitiveness of Luxembourgish enterprises in a transnational and European context
 - Problem to access/buy goods and services online across borders
 - Appropriate law enforcement (“soft” law?)
 - Difficulties to provide hard data (“evidence based policy”)

The Internal Market still does not work as it should. How could we make further progress ?

Although significant progress has been made to unleash the potential of the Internal Market, difficulties still subsist in cross-border trade. Some of the problems are known, others are new.

What concrete actions would you see in order to have the problems solved?

- Analyse and eliminate systematically the concrete obstacles presented by businesses
- Publish and realize an “Action Plan for the completion of the Internal Market” (with a clear time schedule)
- Combat legal fragmentation
- Reduce regulatory burden on enterprises
- In impact assessments :
 - Consider systematically the specific situation of short-term cross-border exchange and temporary transnational business
 - Carry out systematically an “internal market test” and a “SME test” (“think small first”- principle) on every legislative proposal

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