

European Commission

Ms Teresa Ribera,  
Exec. Vice-President for a Clean, Just & Competitive  
Transition

Mr Stéphane Séjourné,  
Exec. Vice-President for Prosperity & Industrial Strategy

DATE & REFERENCE

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SUBJECT

EU legislative action on territorial  
supply constraints

COPY TO

Commissioner H. Lahbib  
Commissioner W. Hoekstra  
Commissioner C. Hansen

Dear Executive Vice-President, Ms Ribera,  
Dear Executive Vice-President, Mr Séjourné,

The recently published Single Market Strategy sets out to create a simpler, stronger and seamless European home market. The Benelux countries broadly welcome this strategy and its ambition to tackle significant remaining barriers and further develop the Single Market.

We particularly appreciate its prioritisation of action on territorial supply constraints (TSCs) by defining them as one of the ‘terrible ten’ Single Market barriers. Indeed, our countries, recently supported by a number of other Member States, have been pressing for European action on this issue for several years.

At the same time, we regret that the Strategy does not explicitly propose legislative action to tackle TSCs in situations beyond those captured by competition law. We take note that the Commission will develop tools to address unjustified territorial restrictions, including situations that are not currently covered by competition law. We believe that a legislative initiative should be among those tools, provided its necessity has been demonstrated by means of a robust impact assessment and a competitiveness check. In our view, ambitious solutions are needed to address unjustified TSCs in order to remove this persistent Single Market barrier, and we encourage you to come forward with a legislative proposal.

The Single Market is at the heart of EU integration and is the cornerstone of Europe’s competitiveness, prosperity and social welfare. Its effective functioning is of paramount importance to the interwoven, open economies of the EU Member States. TSCs are a clear barrier to the proper functioning of the Single Market, as was highlighted in the Commission’s last Annual Single Market and Competitiveness report. By their very nature, they run counter to its aim and spirit. This has now also been clearly recognised in the new Single Market Strategy.

TSCs are illegitimate constraints hindering retailers from sourcing products in the member state of their choice at the best possible market conditions. They usually arise where companies have an unfavourable bargaining position vis-à-vis their supplier, due for example to large size differences between retailers and producers, and/or in dependency relationships. TSCs are illegitimate where they cannot be justified on objective grounds. They can take various forms such as refusing to supply, restricting quantities, limiting the choice of country of supply, and applying unjustified variations in packaging.

As has been shown in several studies and surveys carried out by – and other documents originating from – the European Commission,<sup>1</sup> the Benelux<sup>2</sup> and individual member states<sup>3</sup>, TSCs are widespread in the EU and affect various sectors. This was confirmed at the Competitiveness Council meeting on 24 May 2024, where a non-paper on TSCs was put on the agenda by eight Member States and received support from several additional delegations during the meeting.<sup>4</sup>

At that same Council meeting, it was decided that the topic would be further investigated by the Single Market Enforcement Taskforce (SMET) to pave the way for potential future legislative action. The very recent results of the SMET fact-finding exercise have shown that – although not all countries have provided feedback yet – 17 Member States have identified some form of TSCs in their territory.

Moreover, the Benelux countries are heavily affected. The negative effects of TSCs not only have a visible impact in the retail sector, where they ultimately lead to unnecessarily high prices for consumers, but also negatively affect companies' competitiveness.

Recent years have witnessed a more open and active stance by the European Commission regarding TSCs, especially in the field of competition (e.g. the *AB Inbev*, *Mondelez* and *Pierre Cardin* cases). As mentioned above, TSCs are also currently being discussed in the framework of SMET and were the subject of a stakeholder dialogue on 7 April, organised by the European Commission.

We welcome these developments and the European Commission's goal, expressed in the Single Market Strategy, to develop tools to act against unjustified TSCs that go beyond those captured by competition law. As the Benelux countries already indicated in 2021, this should also entail targeted legislative action, supported by a substantiated impact assessment. This is particularly relevant in the agri-food supply chain, where relationships between food industry suppliers or brands and large purchasing alliances can be imbalanced.

We will continue to share our insights on the development of tools and legislation at technical level with DG GROW and are grateful for their openness to working together in this process.

We thank you for taking our views into consideration and look forward to your response, continued discussion and further cooperation.

Yours sincerely,


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<sup>1</sup> Study on territorial supply constraints in the EU retail sector, LE Europe and VVA (commissioned by the European Commission), July 2020.

<sup>2</sup> Territorial Supply Constraints in the Retail Trade in Belgium, the Netherlands and Luxembourg, Secretariat General of the Benelux Union, February 2018.


<sup>3</sup> *Inter alia*: Territoriale Leveringsbeperkingen, Ecorys (commissioned by the Dutch Ministry of Economic Affairs and Climate Policy), 22 November 2023; letter from H.E. Mr Kyriakos Mitsotakis, Prime Minister of Greece to Ursula von der Leyen, President of the European Commission on the topic of TSCs, 18 May 2024; Luxembourg survey on the future of the Single Market, published for the 30<sup>th</sup> anniversary of the Single Market in 2023.

<sup>4</sup> The non-paper was signed by Belgium, Croatia, the Czech Republic, Denmark, Greece, Luxembourg, the Netherlands and Slovakia. At the meeting itself, Germany, Poland and Malta voiced their support for addressing unjustified TSCs.



David Clarinval

Deputy Prime Minister and Federal Minister for Work, the Economy and Agriculture of Belgium



Vincent Karremans

Minister of Economic Affairs of the Netherlands



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Minister of the Economy, SME, Energy and Tourism of Luxembourg

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*The Benelux is an intergovernmental partnership that unites Belgium, the Netherlands and Luxembourg and aims to serve as a laboratory for European integration. The renewed Benelux Treaty signed in 2008 focuses on cooperation in the areas of the internal market, sustainable development and security & justice.*