

Which enforcement barriers are hurting Nordic businesses?



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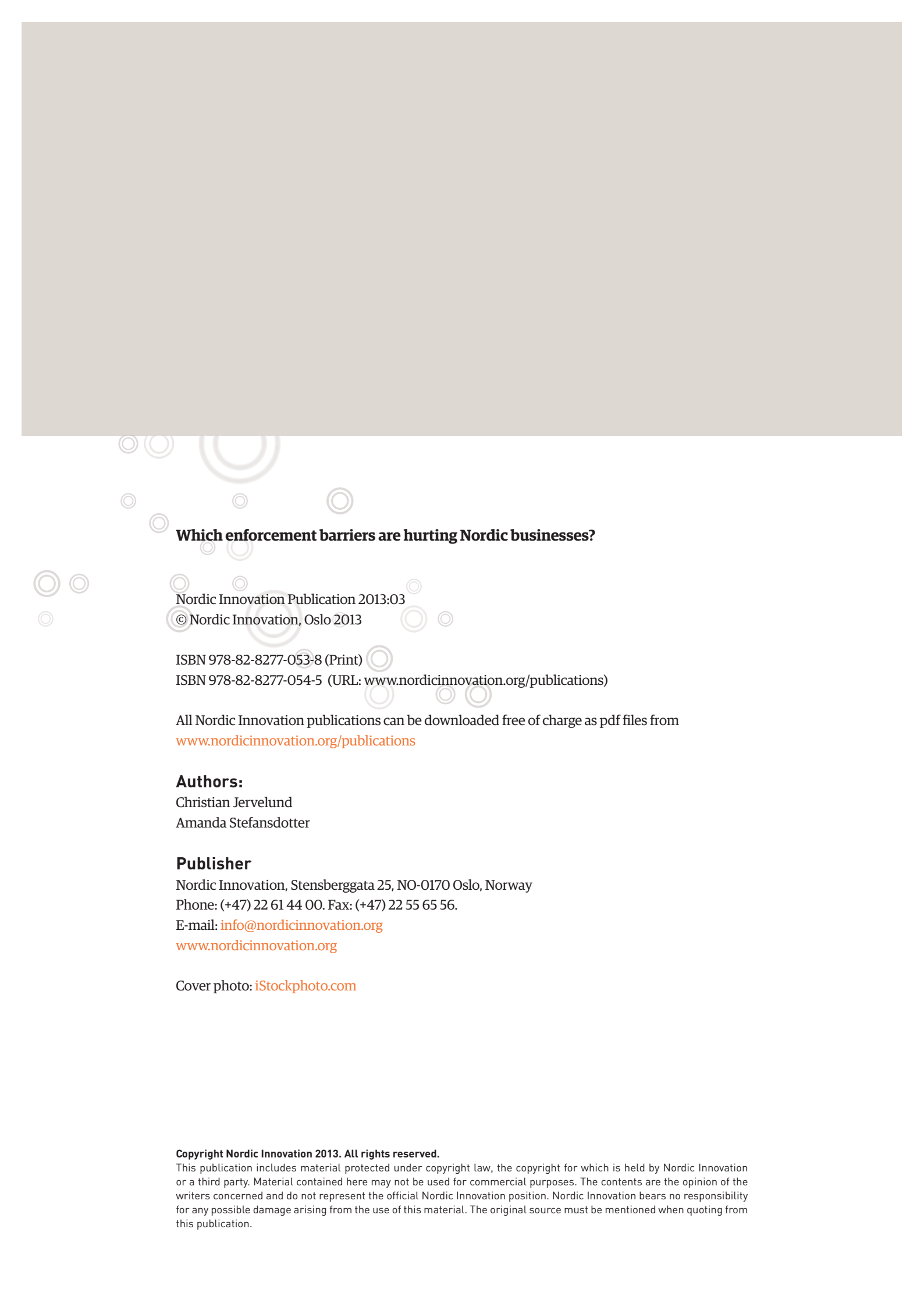
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October 2013

Nordic Innovation Publication 2013:03



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Nordic Innovation Publication 2013:03

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ISBN 978-82-8277-053-8 (Print)

ISBN 978-82-8277-054-5 (URL: www.nordicinnovation.org/publications)

All Nordic Innovation publications can be downloaded free of charge as pdf files from
www.nordicinnovation.org/publications

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Cover photo: iStockphoto.com

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Executive summary¹

The Nordic region is particularly competitive in services, transport, food, green technology, communication services and equipment, machinery and health care services including pharmaceuticals. This leads to high exports in these industries which generates jobs and brings wealth to the region. Barriers to exports in these industries are thus particularly harmful for growth and wealth creation. We find evidence that a subset of these industries namely *services, transport, food and green technology* are facing barriers due to EU legislation that is not being applied as intended. For example, the existing public procurement directives ought to pave the way for non-discrimination between domestic and Foreign Service providers. Yet, it is not always the case, which an example of emergency service provider Falck demonstrates.

By taking the lead and push for better enforcement of existing EU legislation within these targeted industries in the other EU countries, the Nordic countries will directly strengthen the competitiveness of its businesses eventually leading to higher economic wealth. However, what is at least as interesting, but often overlooked, is that pushing for better enforcement within the Nordic region may indirectly increase economic wealth creation. The reason is that a level playing field in the Nordic countries provides a 'training' ground for Nordic businesses sharpening their offerings and production processes, stimulating innovation and supporting the build-up of larger businesses to name a few. This allows them to better compete in the EU – barriers or not – and even more importantly, to compete globally.

We find that action in **three** policy areas should be prioritised.

First, a strengthening of the current resolution mechanisms. SOLVIT has proven its worth as an EU resolution mechanism between consumers/business and Member State agencies interpreting and enforcing EU legislation with easy access and fairly high success rate, while costing relatively little. However, the resources provided by Member States are unequal and often too few. This ought to be improved. Furthermore, SOLVIT has no competence over other national agencies. This limits its ability to solve cases and especially make sure that similar cases do not arise later on. Finally, uniting the individual Member State competences on SOLVIT, TRIS, IMI etc. into a single competence centre could create critical mass leading to better quality and coverage in settling disputes.

The Directive 98/34 procedures have worked well in preventing new technical barriers from arising in the Single Market. The idea of 'checks and balances' in 98/34 could be copied to a procedure for checking if EU *regulation* (which is not transposed and implemented

¹ This study is a spin-off of the Copenhagen Economics study for Nordic Innovation entitled 'Delivering a Stronger Single Market' from 2012.

by Member States, but is immediately binding once agreed upon) is in conflict with Member State legislation. Such a procedure is not systematically in place today.

Second, continue to support Nordic and preferably EU wide standardisation initiatives within the industries with comparative advantages. Market driven standardisation potentially followed up by widely acknowledged certification schemes can facilitate cross border trade. However, trends suggest that national standardisation schemes – which may act to reduce cross border trade – is on the rise compared to EU based schemes. Nordic countries can strengthen their businesses competitiveness by working to ensure Nordic based schemes when EU based are not possible; due to the 'training' ground argument.

Third, strengthen focus on the micro level of enforcement. We find that in many EU countries the incentive to defend and actively enforce EU legislation is weak. It is under prioritised either implicitly or explicitly. Even in the Nordic countries, where enforcement culture is well functioning on a general level, it is still evident that the authorities' ability to change their procedures in order to fully comply with new EU legislation is not good enough.

In order to advance enforcement at the 'micro level' the underlying incentives for authorities to change focus and alter procedures, implement them in practice and monitor case handlers' behaviour and follow up accordingly must be better understood. Considering the bulk of management literature on 'change management' in large corporations, which by the way suggest that much more than half of the attempts to enforce a new strategy and new procedures are unsuccessful, we believe that understanding the 'change management' needs of public authorities to enforcement of EU legislation should be prioritised in future research.

Chapter 1

Main findings

A country or region has a comparative advantage where it is able to produce a particular good or service at lower cost compared to other goods or services. Countries will export more of the goods and services where it holds a comparative advantage.

We find that Nordic businesses hold comparative advantages in services in general, and in certain goods, cf. **Table 1**.

Table 1 Comparative advantage

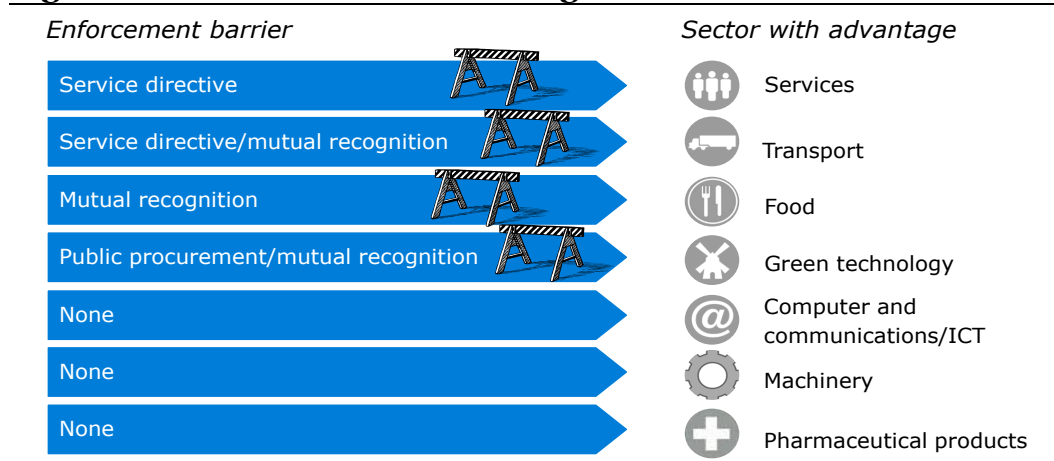
	Services	Transport	Computer/ communi- cations ser- vices	Food	Machinery, nuclear re- actors	Health care	Communica- tion equip- ment	Green tech- nology
Denmark	-*	√		√	√	√		√
Finland	-*		√		√		√	-*
Iceland	-*	√		√				-*
Norway	-*	√	√					-*
Sweden	-*		√		√	√	√	-*
Nordics	√	√	√	√	[√]	√	√	√*

Note: Comparative advantage measures the intensity of trade specialisation of a country within the world, and is based on OECD practice. *: We do not have measures of comparative advantage.

Source: OECD statistics, World development indicators by WTO, Copenhagen Economics, and Nordic Energy Technology scoreboard based on UN Comtrade Database

For some of these industries, enforcement barriers, as in lack of national compliance with EU legislation, are among the highest in the EU. We find this to be the case for Services, Transport, Food and Green technology, cf. **Figure 1**.

Figure 1 Overview of Nordic strengths and enforcement barriers



Source: Based on analyses for this current study and Copenhagen Economics (2012).

These barriers reduce the economic growth potential in the Nordic countries, exactly because they impact areas where Nordic countries are particularly strong and prone for exports. Therefore, Nordic efforts to reduce enforcement barriers in the EU should focus on these areas. Some of them are wide in scope, for example Services, and should be looked closer at to see if any particular segments can be identified once concrete policy is to be devised.

Below we provide examples of how the barriers reveal themselves and what steps could be taken to reduce them.

1.1 Services

Many economic operators still appear to be deterred from competing for service tenders in other Member States due to competitive, structural, legal or administrative factors.

The evaluation in 'Delivering a Stronger Single Market' found that differences in implementation and application of the procurement Directives have led to different outcomes in different Member States. The time taken to complete procedures and the cost to public purchasers vary widely across Member States.

Moreover, with too many detailed rules and easy litigation or appeals, national officials also become overly prudent; that is, in order to be 'safe', public procurement deteriorates into 'ticking off items' on a long list of bureaucratic requirements instead of focusing on obtaining 'value for money'.

Certain parts of the public sector are making very little use of procuring services from private suppliers in the EU Single Market but rather prefer them to be supplied inhouse or at least locally by private operators. Examples are the education sector, social services and the health care sector.

An example of the limitations for firms participating in cross-border public procurement can be found in the area of emergency medical services. Falck is a Danish company providing emergency medical services in 34 different countries, eleven of which are EU Member States. Falck finds that its exports to EU Member States are especially limited by lack of transparency in the procurement procedures, unfair competition and discriminatory measures favouring national service providers. It also finds that legislators sometimes seek to avoid tendering of emergency medical services.

Box 1 Falck

The Company

Falck is a Danish company providing Emergency Medical Services (EMS) in 34 different countries, eleven of which are EU member states. EMS is a common denomination for pre-hospital and hospital services associated with ambulance services, emergency doctor's services and patient transportation.

- **Worldwide revenue (2011): DKK 10.2 billion (approx. €1.3 billion)**
- **Worldwide Employees: 25,262 employees**

Case 1- ISO certification

In Poland, a barrier to competition is the different requirements of certification for national service providers and foreign companies. While Falck needs to obtain certificates for all of their medical emergency teams, national providers are limited to obtaining ISO certificates for the healthcare establishment within which medical emergency teams operate.

The National Health Fund in Poland, which is responsible for organization of the healthcare benefits market, ruled in favour of Falck's competitors in 2011. Falck has objected to the decision.

Case 2 - National test in Health Care for qualification

In an EMS public procurement in Cologne 2010, companies competing for a service were required to complete a test of the German health care system to qualify as a bidder. A minimum of 15 employees were supposed to participate in the test, which was to be taken in German. As Falck was in the phase of establishing their service, they only had one manager occupied in Germany, and were not able to fulfil the minimum demand. The minimum requirement of 15 participants favoured German companies with business organisations already in place.

Case 3 - Prolongation of existing contracts

Some German states deliberately avoid public procurement procedures by extending existing contracts. Many states are preparing new legislative initiatives to introduce a provision that ensures and protects existing providers from competition. For example, in Sachsen-Anhalt a new Law on Emergency Medical Services was passed in December 2010 prolonging existing contracts. In Thüringen (Gotha) decision makers have explicitly

expressed the “threat” of foreign participants as a reason for prolonging existing contracts.

Case 4 – Red tape

In March 2012, Falck bid on a tender requiring the filling out of 57 individual documents. Based on what the procurer felt was an unclear formulation about management of one of the stations, Falck was disqualified. Falck has appealed the decision.

Source: Based on CE interview June 2012, company website and other material.

Another example of a barrier for cross border service provision is that of a Swedish waste handling company providing services in Estonia, cf. **Box 2**.

Box 2 Swedish waste handling company in Estonia

A Swedish waste management company was through its subsidiary a majority owner of a producers responsibility company’ in Estonia. An Estonian legislative change, however, limited the Swedish company's ability to hold shares in this organisation. The new Estonian rules prohibited companies with waste management as their primary business to be a member of a producers responsibility company, and no company was allowed to hold an ownership interest exceeding 25 per cent of such an organisation.

The new restrictions on free movement could according to SOLVIT Sweden not be justified under EU law, and they turned to the Estonian authorities to mend the situation. The Estonian authorities agreed that the rules constituted a barrier to trade but claimed that the rules could be justified for reasons of environmental protection. Upholding the principle of producer responsibility, could, according to the authority, only be ensured if packaging producers themselves can control the size of the fees charged by the producers’ responsibility company. This was not possible as long as the waste management company could hold a majority ownership in such an organisation. SOLVIT Sweden disagreed with the Estonian authorities' assessment that the restriction could be justified, and claimed that there were less trade restrictive measures that could ensure the principle of producer responsibility. The case was registered as unsolved in SOLVIT.

Source: SOLVIT Sweden, annual report 2010

1.2 Food and green technology

The principal mechanism for eliminating technical barriers in the EU is mutual recognition of existing standards whereby a product lawfully produced and sold in any of the EU Member States must be given free access to all other EU markets.

Mutual recognition is, however, not an option if there are significant differences in the initial standards of the countries. In such cases, some degree of standard harmonisation is a precondition for countries to allow products of other countries to access their markets. Specifically in the case of harmonisation of food regulations, the EU has sought to remove differences in national regulations.

However, barriers remain which affects the export of food in the EU Single Market. Agriculture and foodstuff was the sector that saw the highest number of notifications issued

with comments and/or detailed opinions (over the period 2010-11) in the TRIS database. Thus enforcement barriers in food relate mainly to technical barriers/mutual recognition.

Barriers result from countries requiring specific product characteristics or production processes, for example, a certain package size for food products. These types of hindrances are harmful to Nordic businesses.

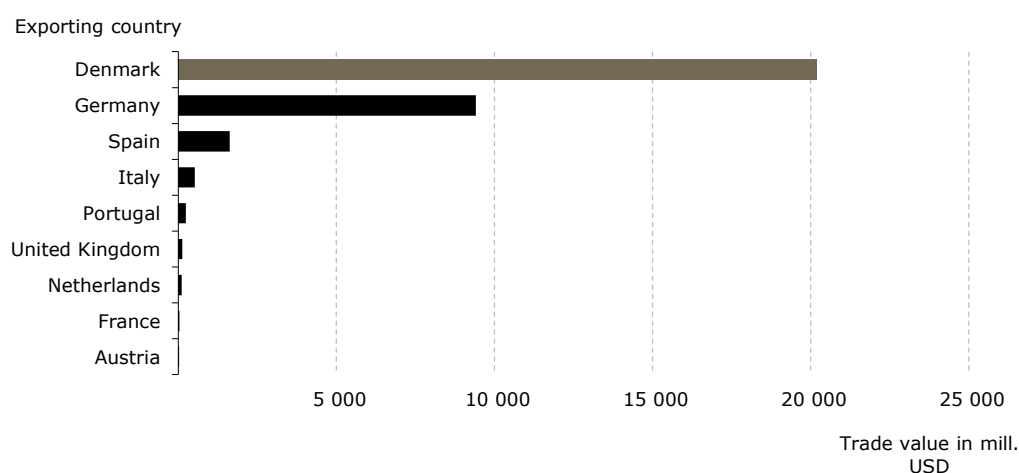
An example from the annual report of SOLVIT Sweden (2009) is the case of a Swedish company selling meat in Finland. There is a sales ban in Finland for all fresh meat products bearing a 'best before' date mark, i.e. labelling applied in Sweden and many European countries. The Finnish Food Safety Authority prevented a Swedish company selling meat in Finland from using such labelling, and declared that labels had to be changed to a 'use-by-date' marking to comply with Finnish law. Re-marking packages going to Finland would add perceptible extra work and costs.

As the example shows, there is still improper application of mutual recognition, which creates technical barriers for free movement of goods within Member States. Though recent regulation introduced several principles to enable mutual recognition such as a single contact point and shift of burden-of-proof to the Member State, there are still issues with incorrect application.

Barriers to exporting clean technology in the Single Market

The competence level in environmental technology is high among the Nordic countries. Wind power technology is for example Denmark's leading clean technology export, and the country is one of the major exporters of such goods in the world, cf. **Figure 2**.

Figure 2 Trade value of exported wind technology, 99-08, million USD



Source: Nordic Energy Technology scoreboard based on UN Comtrade Database

We find at least two types of barriers to renewable technology exports in the EU.

First, non-uniform monitoring and enforcement of common standards and labelling leads to uneven competition between complying and non-complying firms. Non-uniform monitoring and enforcement of common standards and labelling leads to uneven competition between complying and non-complying firms. Firms complying with the standards and labelling requirements have higher costs than non-complying firms. Improved enforcement would increase the incentives to invest in energy efficiency, and increase consumer confidence in standards and labelling. Consumers and public administrations are also affected since they may believe that certain products meet certain standards, when they in fact do not.

Possible solutions are to establish more uniform testing environments, so testing results are recognised across EU borders, to enhance enforcement efforts in order to deter non-compliance, and to improve exchange of information between Member States making surveillance more effective, and non-compliance less tempting.

There is no harmonised approach in the EU on how to promote renewable energy. Instead, there is a myriad of different support mechanisms across the EU, designed in several different ways.

Second, national subsidy schemes differ a great deal between Member States, distorting the Single Market. Understanding this myriad of different support mechanisms is a challenge for investors. An even greater challenge is the uncertain regulatory environment for investors. It is a main priority for EU to bring down the future cost of mitigation, by reducing the cost of renewable energy generation. This is in fact one of the main arguments for supporting for example large scale deployment of offshore wind turbines. By ensuring that there is demand for a certain technology in the future, e.g. offshore wind, the entire supply chain of manufacturers will have sufficient incentives to undertake investments that may drive down the future generation costs.

The profitability of investments in e.g. delivering components and machinery for renewable energy deployment depends crucially on continued demand for renewable energy going forward. This makes the investment climate for supply chain companies uncertain.

Possible solutions are to adopt one common approach to dealing with carbon leakage in EU legislation, instead of the three different approaches currently employed, adopt a consistent approach, so that the criteria for obtaining free allowances are the same independent of whether a firm uses electricity or another energy source, recommend guidelines for the design of capacity mechanisms or to establish common guidelines focusing on key characteristics when implementing different types of support mechanisms for renewable energy.

1.3 Policy suggestion I: SOLVIT

SOLVIT has proven its worth as a resolution mechanism with easy access and fairly high success rate, while costing relatively little. However, the resources provided by Member States are unequal and often too few. This ought to be improved.

Furthermore, SOLVIT has no competence over other national agencies. This will limit its ability to solve cases and especially make sure that similar cases do not arise later on (feedback mechanism). Finally, uniting the individual Member State competences on SOLVIT, TRIS, IMI etc. into a single competence centre could create critical mass, thereby providing the Commission with a more complete picture of the situation in each Member State and allowing easier access for businesses.

Business cases do seem to be underrepresented in SOLVIT. Interviewing SOLVIT centres and large businesses we found that if businesses, and especially big ones, face an enforcement problem in the EU, they often try to solve it themselves rather than exploiting the possibilities in SOLVIT. As big firms usually have in-house legal expert teams, these are considered more apt to handle cross-border issues.

This is the case for the Danish LEGO Group. The LEGO Group is the largest European manufacturer of toys, and it tends to face issues regarding the choice of language for the labels on its products when marketing and selling them in other Member States.

The LEGO Group most often chooses to resolve such conflicts through dialogue with the retailer and relevant authorities in the destination country. If this approach fails, the LEGO Group may choose to ask the advice of the EU Commission on the matter. Hence, the LEGO Group rarely involves a dispute resolution forum like SOLVIT: being a large player, the LEGO Group has the resources available to handle the matters itself. And, being in close contact with the Commission when working on guidance documents etc., it is easier to ask the relevant DG for advice if dialogue with customers and national authorities turns out to be cumbersome.

At least as important as formal procedures, if not more so, are the preventive approaches, including e.g. the on-line inter-Member State Internal Market Information (IMI) communication system between officials at national and regional level, which reduces transaction costs enormously, while enhancing trust between administrations and greatly increasing speed in many cases.

The steady (selective) shift from Directives to regulations for the internal market has also pre-empted numerous implementation problems, and the Directive 98/34 procedures have worked well in preventing new technical barriers from arising in the Single Market.

The idea of 'checks and balances' in 98/34 could be copied to a procedure for checking if EU *regulation* (which is not transposed and implemented by Member States, but is immediately binding once agreed upon) is in conflict with Member State legislation. Such a procedure is not systematically in place today.

Finally, it is worth noting in relation to technical standards that a national technical rule which has been notified under the Directive could still create barriers to the free movement of goods since it has to be implemented by the national administration. Any misunderstanding or flawed interpretation by the competent authority might result in the rule

being wrongly applied. Regulation also requires a change in behaviour of national authorities of destination Member States. The recent Commission evaluation² concludes that such a change in behaviour of national authorities will only come slowly.

1.4 Policy suggestion II: Change management

As focus shifts from issues of timely transposition to issues of correct application, so must the instruments and fora in order to ensure proper enforcement.

The issues shift from being of a general nature to issues of a more specific nature. Thus, they might go from being dealt with at central level in Member States where the Commission can effectively engage the responsible individuals representing the Member State, to be dealt with at local level in Member States by different case handlers.

Such application, is likely to be the difficult to enforce. This is the case as resistance from both lower-level public sector employees and employees higher up in the bureaucracy can lead to wrong application. Administrative change as e.g. brought about by new EU legislation is rarely uncomplicated and civil servants often play a pivotal role in the implementation of such changes.³

Much of EU legislation requires civil servants to develop and follow new procedures and deal differently with businesses approaching them. Consider for example the public procurement directive, which promotes transparency and a level playing field for domestic and foreign competitors. Yet we see examples of the opposite. Perhaps this is due to a lack of knowledge or opposition to new procedures in national agencies. The same is true for the regulation governing mutual recognition for goods, where national authorities must now carry the burden of proof as to why a company wanting to sell its goods cross border into the Member State is not allowed to do so due to e.g. national safety standards. Before the regulation the burden of proof was on the company. This change requires new procedures and behaviour on the part of the national agency and eventually the individual civil servants.

This may be a significant challenge, one that has not attracted much focus when discussing EU legislation. However, findings from organisational and management literature suggests that changing the way people behave on their jobs is not simple. In a 2008 survey of 1,500 managers in 21 different industries around the world⁴, IBM found that only 41 per cent of projects involving organizational changes were described as successful. In similar studies, McKinsey & Co have found that only one third of transformational efforts are in fact successful.⁵

² European Commission (2012), "Communication to the European Parliament and the Council: First Report on the application of Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC", 15.6.2012, COM (2012) 292 final

³ Fernandez & Rainey (2006).

⁴ IBM (2008).

⁵ McKinsey & Co (2010).

The idea of approaching the poor application issue from a 'change management' angle acknowledging the difficulty of successfully executing substantial changes in work patterns, we believe can be treated within the World of Compliance view developed in Falkner and Treib (2008). According to this model, EU countries can be divided into four categories illustrating their approach to properly complying with EU legislation. The countries are placed in one of the four categories depending on their performance along the two criteria of 1) transposition behaviour and 2) effectiveness of their administrations and judiciaries or administrative effectiveness, cf. **Table 2**.

Table 2 Worlds of Compliance

Criteria	World of observance	World of domestic politics	World of dead letters	World of transposition neglect
1: Transposition behaviour	Respect of rule of law	Pick and choose	Pick and choose	Neglect
2: Administrative effectiveness	Respect of rule of law	Respect of rule of law	Neglect	Respect of rule of law/neglect
3: NEW: Change management	?	?	?	?
Countries	DNK, FIN, SWE	AUT, BEL, DEU, NLD, ESP, GBR	IRE, ITA, CZE, HUN, SVN, SVK	FRA, GRC, LUX, PRT

Note: Transposition behaviour is our shorthand for the original phrase of 'Process pattern at stage of transposition' and Administrative effectiveness is our shorthand for the original phrase of 'process pattern at stage of practical implementation'.

Source: Falkner and Treib (2008) expanded with micro enforcement through change management

Acknowledging the 'change management' challenges of enforcing a new strategy for dealing with businesses brought about by new EU legislation, leads us to amend the model with a third criteria called 'Change management'. Where the second criteria is focussed on the countries' bureaucratic and administrative maturity, the 'change management' category is focussed on the administrations ability to accommodate change and thereby actually carry out in real life the new EU legislation as implemented in national law.

We do not know much about how well vested the countries, and indeed the individual national agencies in question, are in carrying out 'change management'. We therefore recommend increased focus on research into the performance of 'change management' in government agencies. This research should map current performance and explain differences by identifying barriers and incentives including aspects of behavioural economics, which seeks to model the sometimes irrational behaviour we display when faced with new and complex tasks. As is new behaviour brought about by new EU legislation.

1.5 Policy suggestion III: Standardisation

There is a large potential for Nordic countries to reap economic gains from increased use of voluntary standards. This is particularly the case in services where the use of standards are still few but where Nordic businesses have a comparative advantage.

⁶ As it reads in Falkner and Treib (2008), "... Since administrations and judiciaries generally work effectively, application and enforcement of transposition laws are not a major problem in this world..."

Standards can work to reduce the lack of information that often consumers have about the benefits of a specific service. The idea is that this increases transparency and competition, and even innovation and quality as service providers want to qualify for complying with the standard. This raises the question of certifications and enforcement of these in relation to keeping up with the standards.

As with EU Single Market legislation which aims at securing a level playingfield so do voluntary standards and certifications, when carried out at EU level. However, when carried out at national level, standardisation can introduce different requirements acting as barriers to cross border between member states. From a recent study commissioned by Nordic Innovation⁷, we find that national standards in services are being developed much faster than EU standards. Currently 55 service standards exist at EU level whereas 380 exist at national level.

If not possible to develop at EU level, the Nordic countries can benefit from Nordic developing standards thereby increasing quality and competition among its businesses. In addition to benefits to Nordic consumers, it sharpens the competitiveness of the business for EU and global competition. Security services is one example of an industry where Nordic standards may prove beneficial.

⁷ Nordic Innovation (2012b).

Chapter 2

Nordic comparative advantages

This chapter provides an overview of the sectors where some or all of the Nordic countries have a comparative advantage. The principle of comparative advantage postulates that a nation will export the goods or services in which it has its greatest comparative advantage, and import those in which it has the least.

A country or region have a comparative advantage when they can produce a service or good at a *comparatively* low cost in relation to other countries or regions. It can also be viewed as a measure of specialisation. The measure of comparative advantage used in the study is described in **Box 3**.

Box 3 Measure of comparative advantage

The revealed comparative advantage (RCA) measures the intensity of trade specialisation of a country within the world, and is based on OECD practice.

The value of the index is obtained by dividing a the export share of a product (or type of goods) of the total exports of goods of a country, by the export share of this product of the region or the world. For the study, we have mainly used data for the world or OECD countries.

If the RCA takes a value less than one (1) this implies that the country is not specialised in exporting the product (or type of goods). The share of that category of goods within the total exports of goods of this country is then less than the corresponding world share. Similarly if the index exceeds 1 this implies that the country is specialised in exporting this type of goods. The same index is used to calculate comparative advantages for services.

Source: OECD statistics, description of RCA index

2.1 Overview

The Nordic countries have a broad advantage in producing services. In terms of products, food, information communications technology (ICT) goods, machinery and pharmaceuticals are some of the goods where the Nordic countries are specialised according to OECD, cf. **Table 3**.

Table 3 Comparative advantage in the world market?

	Transport	Computer/ communications ser- vices	Food	Machinery, nuclear reactors	Health care	Communication equipment
Denmark	√		√	√	√	
Finland		√		√		√
Iceland	√		√			
Norway	√	√				
Sweden		√		√	√	√
Nordics	√	√	√		√	√

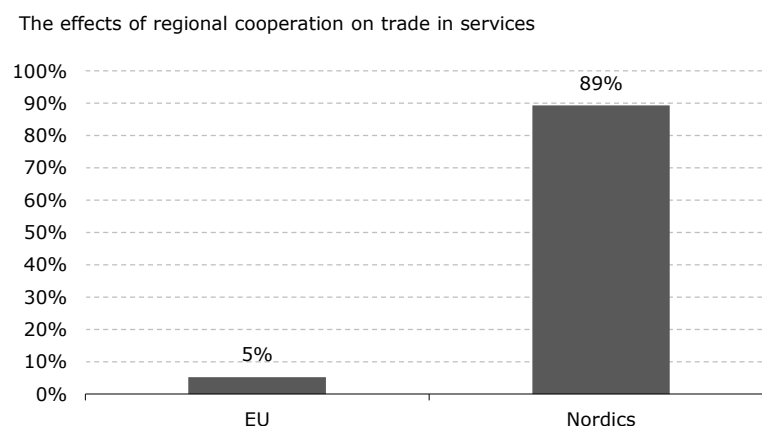
Note: *) Each sector is identified using the RCA index, except for 'green technology' for which we found no comparable data. We assess that the Nordics have a comparative advantage in this sector based on other research.

Source: OECD statistics, World development indicators by WTO, Copenhagen Economics, and Nordic Energy Technology scoreboard based on UN Comtrade Database

2.2 Services

The Nordics are strong in services generally. This is indicated by e.g. the fact that services as a share of total exports for the Nordic countries is 30 per cent, as opposed to 25 per cent for the EU, and 21 per cent for all world countries. As **Figure 3** shows, intra-Nordic trade is also 84% greater than intra-EU trade when accounting for economic and geographical conditions, and cultural similarities. While it is not surprising that EU borders create more barriers to trade than Nordic borders (the five Nordic countries are more integrated than the 27 EU countries), the size of the effect is surprising.

Figure 3 Level of regional trade in services in the EU and among the Nordic countries



Note: The Nordic countries include Denmark, Finland, Iceland, Norway and Sweden.

Source: Copenhagen Economics (2012).

Specifically, the Nordics compete in producing transport services (Iceland, Denmark, Norway), and computer, communications and other services (Finland, Norway, Sweden), cf. **Table 4**.

Table 4 Transportation, communication and ICT services, 2010

Services	Transport services (% of total service exports)	Comparative advantage (world market)?	Computer, communications and other services (% of total service exports)	Comparative advantage (world market)?
Denmark*	47,07%	√	-	
Finland	11,08%		85,97%	√
Iceland	48,44%	√	28,94%	
Norway	39,46%	√	44,46%	√
Sweden	15,37%		64,14%	√
Nordics	22,29%	√	62,03%	√
EU	19,52%	-	43,70%	-
World	19,99%	-	46,34%	-

Note: *) data from 2004 (latest data available for Denmark from OECD)

Source: OECD: RCA index, data from 2010 and WDI, data from 2010

2.3 Goods

We find that Nordics are strong in producing certain goods, particularly food, machinery, pharmaceutical products, and some information and communications technology (ICT) goods. The Nordic countries are also among world leaders in clean technologies.

Table 5 Food, machinery and pharmaceutical products, 2010

<i>Goods</i>	Food exports [% of merchandise exports]	Comparative advantage [world market]?	Exports of machinery, nuclear reactors, boilers, etc. [% of total exports]	Comparative advantage [world market]?	Exports of pharmaceuticals [% of total exports]	Comparative advantage [world market]?
Denmark	18,36%	√	13,26%	√	8,73%	√
Finland	2,58%		13,77%	√	1,88%	
Iceland	41,37%	√	2,13%		2,77%	
Norway	7,17%		4,92%		0,54%	
Sweden	4,72%		14,47%	√	5,39%	√
Nordics	8,34%	√	11,27%		4,16%	√
EU	8,73%		-		-	
World	8,21%		11,96%		2,95%	

Note: Goods are classified based on the Harmonized System (HS). The HS is an international nomenclature for the classification of products. It allows participating countries to classify traded goods on a common basis for customs purposes. At the international level, the Harmonized System allows for classifying goods in a six-digit code system.

Source: WDI, data from 2010 and ITC based on UN COMTRADE statistics, data from 2010.

The Nordics are strong in some ICT goods

The largest share of ICT good exports among Nordic countries is communication equipment. Sweden and Finland have a comparative advantage in this category, as well as Nordics as a whole.

Figure 4 ICT goods, 2009

<i>ICT goods</i>	Exports of communication equipment [% total exports]	Comparative advantage [world market]?
Denmark	0,66%	
Finland	8,19%	√
Iceland	0,03%	
Norway	0,60%	
Sweden	4,63%	√
Nordics	3,18%	√
World	2,11%	

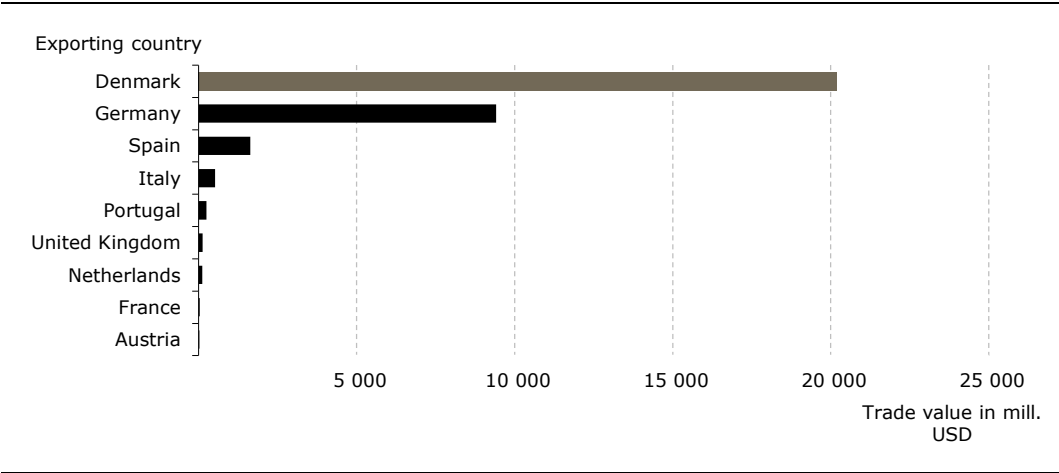
Source: OECD trade statistics, data from 2009.

The Nordics are leaders in green technology

The Nordic countries consistently rank highly on the Cleantech Innovation Index list, and the competence level in environmental technology is high among the Nordics. The International Energy Agency (IEA) sees the five Nordic countries as leaders in the global transition to a low-carbon energy system. For example, one of the world leading export companies and competence suppliers in geothermal development is Mannvit, the largest engineering firm in Iceland.

Wind power is Denmark’s leading cleantech export, and today almost half of the wind turbines around the world are produced by Danish manufacturers such as Vestas and Siemens Wind Power along with component suppliers.

Figure 5 Trade value of exported wind technology, 99-08, mill. USD



Source: Nordic Energy Technology scoreboard based on UN Comtrade Database

Chapter 3

Enforcement barriers

The chapter summarises the areas with barriers in the EU Single Market, which were identified in the study 'Delivering a Stronger Single Market', and their consequences for economic growth in the EU.

3.1 Areas affected

In the first part of this study, we find current poor performance of what we call 'Governance after adoption' of EU legislation. This is the case when Member States do not always fully adapt their national law framework so as to truly and completely comply with new EU legislation (poor implementation and adaptation). We find problems in four areas:

- Taxation (VAT)
- Services
- Public procurement
- Goods governed by mutual recognition

Wrong application of EU legislation is reducing economic growth. Based on existing material, we suggest that poor implementation and application in these four areas may have dampened EU GDP by around 0.8 per cent, which is equivalent to 1/3 of the initial expected economic gain from relevant EU legislation, cf. **Table 6**.

Table 6 Economic impact by areas, EU GDP

Sector covered by legislation	Expected gain GDP (%)	Potential not reaped, GDP (%)
Taxation (1)	1.0	-0.3
Service sector (2)	1.2	-0.4
Public procurement (3)	0.2	-0.1
Mutual recognition (4)	1.8	N/A*
Total without mutual recognition	2.4	-0.8

Note: *We were not able to come up with an estimate of the potential not reaped from mutual recognition legislation, therefore we have not included the expected gain in the total. (1). Primarily VAT Directive 2006/112/EC; (2). Primarily services Directive 2006/123/EC; (3). Primarily procurement Directive 2004/18/EC; (4) primarily Regulation 764/2008.

Source: Copenhagen Economics (2012) 'Delivering a Stronger Single Market'

The four areas where we in found problems with 'Governance after adoption' in 'Delivering a Stronger Single Market' is described below.

Taxation

The VAT Directive (2006/112/EC) is a prominent source of infringement cases and disputes. Problems may arise for example when application for refunding VAT must be submitted to local authorities, and when reimbursement of VAT to importing/exporting companies take long periods of time. There is also a lack of harmonisation of VAT rules between the Member States, which can make proper application difficult. Businesses sometimes apply for country of origin VAT instead of country of destination VAT (which is the dictated VAT rate in the VAT Directive when yearly revenue is above certain threshold).

Services

Member States in which services are provided can only enforce their own requirements in as much as these are *non-discriminatory*, *proportional* and *justified* for reasons of public order, public safety, public health or environmental protection. Two Directives mainly dictate what rules apply to provision of services: the Services Directive 2006/123/EC and the Recognition of professional qualifications 2005/36/EC (Professional Qualifications Directive). Some problems remain, however, in the Single Market for services, for example:

- **Provision of services is accompanied by language requirements**
- **Member States do not allow providers to acquire insurance in other Member States.**
- **Businesses (when providing services both online and offline) are often confronted with additional requirements to those to which they are subjected to in the Member State where they are established.**

Public procurement

At present, the rules on contract award procedures are, mainly, contained in two directives adopted in 2004:

- **Directive 2004/18/EC (the so-called Public Sector Directive or Classic Directive).** This regulates tender bids and contracts awarded by public bodies, in particular of supplies of goods and services and some public works
- **Directive 2004/17/EC (so-called Utilities Directive), which regulates procurement in four specific areas of activity, namely water, energy, transport and postal service.**

The Directives are 'coordination Directives' which do not harmonise public procurement rules in detail. This means that Member States are allowed to go beyond the minimum requirements set in the Directives and are left (in much) to decide how to apply them in practice. This has left some competitive, structural and legal or administrative barriers. For example: differences in implementation and application of the Directives have led to different outcomes in different Member States. The time taken to complete procedures and the cost to public purchasers also vary widely across Member States.

Goods governed by mutual recognition

Mutual recognition is governed by Regulation 764/2008 and applies to products which are not subject to EU harmonisation legislation. Under the principle of mutual recognition national technical rules continue to coexist, but implies that Member States cannot prohibit the sale on its territory of goods which are lawfully produced and/or marketed in another Member State. Member States may depart from the principle of mutual recognition, in which case they must set out in writing the technical or scientific reasons for doing so.

Technical obstacles to the free movement of goods within the EU remain. Firms may have difficulties demonstrating that a product has been lawfully marketed in another Member State, as well as difficulties in identifying which legal provisions apply and which are the relevant national authorities in charge. There may be different testing methods relied upon by the Member States and their possible compatibility through mutual recognition. Also, prior authorisation procedures play an important role, since a change procedures takes time.

3.2 Sectors affected

Certain sectors are represented in the statistics of the European problem solving institutions more than others. These are *transportation, food, building and construction* and *telecommunications*. There are also issues with products or service purchased on-line, which were predominantly represented in the cases handled by ECC centres in 2010. In terms of public procurement in the EU, there is a bias away from procuring goods such as health and education across borders.

3.3 TRIS

The TRIS database is where the Commission collect notifications of the draft national technical regulations relating to all products. The database provides a good overview of industries where there may be a creation of barriers.

Agriculture and foodstuff was the sector that saw the highest number of notifications issued with comments and/or detailed opinions (134 notified draft regulations) over the period 2010-11. The subjects covered included, among others, labelling of foodstuffs, food supplements, and origin of products.

A high number of draft technical regulations in the field of *building and construction*, during the reported period, were also issued with detailed opinions/comments by the Commission and the Member States (68 notified draft regulations).

Table 7 Share of detailed opinions, industries

	2010	2011
Food and agricultural produce	24,6	26,6
Building and construction	7	13,1
Transports	9	10,7
Telecommunications	9,5	10,2
Other products	12,9	9
Environment, packaging	4,1	7,8
Chemical	2,5	5,3
Energy, minerals, wood	7	4,9
Gambling, Games of chance, related	4,1	4,9
Domestic and leisure equipment	1,6	1,6
Health, medical equipment	2	1,6
Information Society services	2,5	1,6
Pharmaceutical products	4,1	1,2
Mechanics	7	1,2
Total	100	100

Note: Based on the TRIS database

Source: Copenhagen Economics (2012), *Delivering a Stronger Single Market*, and CEPS (2012), *Enforcement in the EU Single Market*

Another sector with a high number of notified draft regulations issued with detail opinions and/or comments was *transport*. This sector also stand out in the Commission's written objections (7 objections in 2010-11).

Yet another sector with a high number of notified draft was *telecommunications*. This is a sector in which rapid technology developments in recent years have resulted in increasingly complex national regulations, which could potentially create barriers within the internal market.

During this period (2010-11), a great number of notified draft regulations issued with comments and/or detailed opinions also related to *mechanics* (39), and *environment and packaging* (30).

3.4 SOLVIT cases

In the harmonised area, the problems reported to SOLVIT (20 cases) involve mainly situations where the national regulations go beyond the relevant Directive/Regulation, by imposing additional requirements on products that had been certified in another Member State and that comply with the essential requirements imposed by EU legislation.

The sectors most affected are *food* (eight cases), *motor vehicles* (eight cases), *fertilisers* (four cases), *construction products* (three cases) and *medicinal products* (three cases).

The main problems presented by business in the service area in 2011 were related to electricity/gas, tourism, telecommunications, financial and insurance activity, IT and other communications services and accounting/consultancy.

Figure 6 Cases in reported to SOVLIT 2011 relating to services

Sectors	Number of cases by sector	Problem		
		Directive 2006/123/EC	Recognition of professional qualifications (Directive 2005/36/CE or other)	Other
Engineering	1	X	X	
Electricity, gas	4	X	X	Arts 56 and 57 TFEU ISO 9001/2008 Other
Transportation and storage	1			Euro-license
Tourism	2	X	X	Other
Telecommunications	2			Directive 2002/20/EC ^a Other
Food services activities	1	X		
Human health services	1			Action was brought before the national Constitutional Court
Construction	1			Directive 85/337/EEC of 27 June 2005 ^b Other
Scientific research and development	1			Other
Financial and insurance activity	2			Directive 2009/103/EC ^c Arts 56, 57, 59 and 60 TFEU
Aviation	1			Regulation 1008/2008/EC ^d
IT and other communication services	2			Unresolved cases ^e
Others	1			Other (EN 60335-2-27; chapter IV of Directive 2001/95/EC) ^f Other
Agriculture, forestry and fishing	1			Other
Accounting, consultancy	2	X	X	
Temporary work	1			Directive 2008/104/EC ^g
Total	24 ^h			

Source: CEPS (2012), Enforcement in the EU Single Market

3.5 ECC centres cases

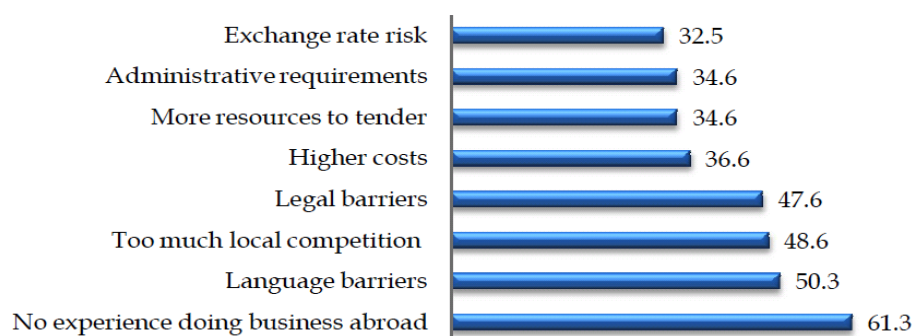
The ECCs deal with an extensive range of cross-border consumer issues. In more than half of the cases (56.2%) handled by the ECC centres in 2010, the product or service was purchased on-line. Transport remains the sector with more complaints dealt with by the ECC-Net (33.2%), and 57% of them were related to air passengers' rights. The other sectors with a large number of complaints were recreation and cultural services (23.7%) and restaurants, hotel and accommodation (11.5%).

3.6 Publicly procured goods and services

There is a host of other factors influencing the propensity to bid and difficulties to overcome before being successful in obtaining awards. One is that Member States exhibit a great variation in the degree of (de)centralisation in procurement, with an estimated total of some 250 000 contracting authorities in the EU. In France alone, there are several tens of thousands of purchasing authorities (with some 300 000 public officials working on bids and awards). Whereas (in 2006-09) Finland procures some 50% of contract value locally, Portugal, Estonia, Slovakia, Bulgaria and Cyprus have local shares of 10% or less, that is, they mainly purchase centrally. Contracts from utilities assume a very small share in Slovenia and the Netherlands, whereas they make up one-third or more in e.g. Austria, Belgium, Greece and Hungary. **Figure 7** gives eight reasons for why firms are reluctant towards bidding in cross-border tenders from a recent survey.

Figure 7 Reasons for not bidding cross-border

Figure 20. Reasons for not bidding cross-border



Source: European Commission, "EU public procurement legislation: delivering results, summary of evaluation report", 2011.

Source: CEPS (2012)

Another factor is the sectoral composition of tenders: in the one-fifth of total public procurement in the EU that is published in the TED, there is almost no tender for supply of goods and services to health, education and social services, which are typically supplied locally. This despite the fact that they form roughly 6% of the market value of public procurement in the EU-27 (16% of GDP).

Chapter 4

Matching comparative advantages with barriers

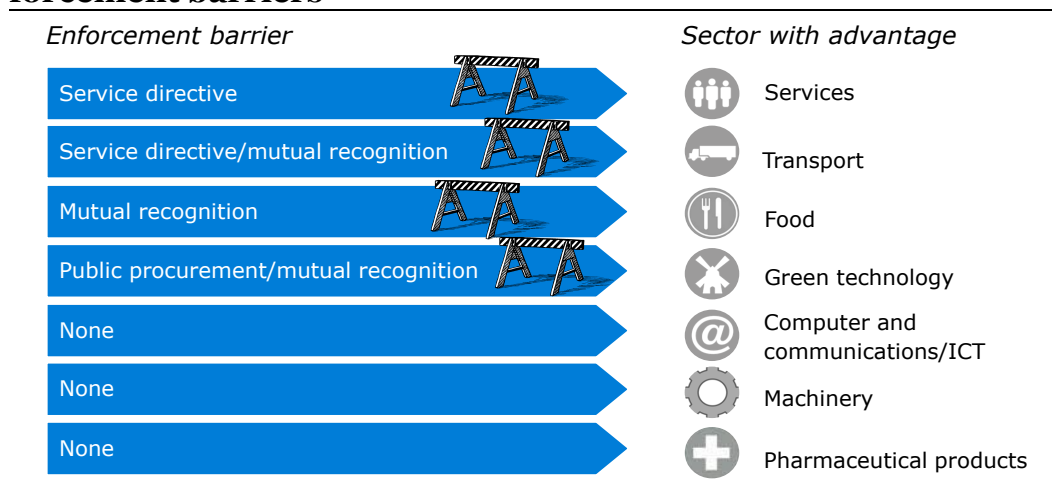
This chapter describes where sectors with barriers and strong Nordic sectors 'match', i.e. where barriers in the EU Single Market are most likely to harm Nordic exporting firms.

Cases from e.g. SOL VIT are investigated, and sector specific examples of the impacts of barriers are presented for transportation, food, green technology, computer and communications services and ICT goods, and pharmaceutical products.

4.1 Overview of strengths and barriers

Figure 1 summarises the sectors where the Nordic countries have a comparative advantages, and sectors mainly affected by enforcement barriers in the EU Single Market.

Figure 8 Nordic sectors with comparative advantages and enforcement barriers



Source: Copenhagen Economics

4.2 Services

Many economic operators still appear to be deterred from competing for service tenders in other Member States by a combination of competitive, structural and legal or administrative factors.

The evaluation in 'Delivering a Stronger Single Market' found that differences in implementation and application of the Directives have led to different outcomes in different Member States. The time taken to complete procedures and the cost to public purchasers

vary widely across Member States. Moreover, with too many detailed rules and easy litigation or appeals, national officials also become overly prudent, that is, in order to be 'safe', public procurement deteriorates into 'ticking off items' on a long list of bureaucratic requirements instead of focusing on obtaining 'value for money'.

Concrete examples of discrimination in the area of emergency medical services illustrate what kind of barriers a foreign firm might encounter, cf. **Box 4**.

Box 4 The case of Falck

The Company

Falck is a Danish company providing Emergency Medical Services (EMS) in 34 different countries, eleven of which are EU Member States. EMS is a common denomination for pre-hospital and hospital services associated with ambulance services, emergency doctor's services and patient transportation.

- **Worldwide revenue (2011): DKK 10.2 billion (approx. €1.3 billion)**
- **Worldwide Employees: 25,262 employees**

Single Market challenges

One of the core objectives of the European public procurement procedures, specifically Directive 2004/18/EC which regulates tender bids and contracts awarded by public bodies, in particular of supplies of goods and services and some public works, is to enable cross-border competition to improve efficiency in service provision. EMS-services are tendered out in some Member States such as Denmark, Germany and Poland, and Falck is one of the main actors in the market, participating in more than 100 public procurement cases yearly.

Considerable success has been achieved through the Single Market since the introduction of the first public procurement procedures. Nevertheless, there are improvements to be made in the EMS-service area. Companies competing in EMS-tenders in another Member State face barriers, specifically:

- **Lack of transparency in procedures**
- **Unfair competition**
- **Discriminatory measures favouring national service providers and legislative practices seeking to avoid tendering of EMS**

Case 1- ISO certification

In Poland, a barrier to competition is the different requirements of certification for national service providers and foreign companies. While Falck needs to obtain certificates for all of their medical emergency teams, national providers are limited to obtaining ISO certificates for the healthcare establishment within which medical emergency teams operate.

The National Health Fund in Poland, which is responsible for organization of the healthcare benefits market, ruled in favour of Falck's competitors in 2011. Falck has objected to the decision.

Case 2 - National test in Health Care for qualification

In an EMS public procurement in Cologne 2010, companies competing for a service were required to complete a test of the German health care system to qualify as a bidder. A minimum of 15 employees were supposed to participate in the test, which was to be taken in German. As Falck was in the phase of establishing their service, they only had one manager occupied in Germany, and were not able to fulfil the minimum demand. The minimum requirement of 15 participants favoured German companies with business organisations already in place.

Case 3 – Prolongation of existing contracts

Some German states deliberately avoid public procurement procedures by prolonging existing contracts. Many states are preparing new legislative initiatives to introduce provision that ensures and protects existing providers from competition. For example, in Sachsen-Anhalt a new Law on Emergency Medical Services was passed in December 2010 prolonging existing contracts. In Thüringen (Gotha) decision makers have explicitly expressed the “threat” of foreign participants as a reason for prolonging existing contracts.

Case 4 – Red tape

In March 2012, Falck bid on a tender requiring the filling out of 57 individual documents. Based on what the procurer felt was an unclear formulation about management of one of the stations, Falck was disqualified. Falck has appealed the decision.

Single Market solutions

The following solutions are proposed for the Single Market problem

- Increased use of e-procurement to make the procurement process more efficient by reducing red tape
- Removing political and administrative barriers to implementing European public procurement procedures in EMS-services by EU authorities
- Mandatory procurement for EMS-services

Source: Based on CE interview June 2012, company website and other material.

4.3 Transport

Transport was a sector that received a great number of notified draft regulations issued with comments and/or detailed opinions in 2010-11.

The sector also saw a great deal of problems reported to SOLVIT involving situations where the national regulations go beyond the relevant directive/regulation, by imposing additional requirements on products that had been certified in another Member State and that comply with the essential requirements imposed by EU legislation. Transport also remains the sector with more complaints dealt with by the ECC-Net.

As the Nordic countries compete in producing transportation (Iceland, Denmark, Norway), barriers in this sector may be particularly harmful to Nordic companies. The EU Commission states that much needs to be done to complete the internal market for transport, where considerable bottlenecks and other barriers remain.⁸ National passenger markets, that represent the largest share of the transport business, are still largely closed. The crossing of national borders continues to cause inefficiencies and additional costs in rail. Also short sea shipping faces higher administrative burden compared to the land-based modes whenever national borders within the EU are crossed. The lack of competition and residual administrative barriers hold back the quality and efficiency of the transport service.

⁸ EU Commission (2011) Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system

The transport systems of the eastern and western parts of Europe should be united to fully reflect the transport needs of the EU citizens. Using transport and infrastructure more efficiently through use of improved traffic management and information systems (e.g. ITS, SESAR, ERTMS, SafeSeaNet, RIS), abolition of barriers to short sea shipping, undistorted pricing etc. should be promoted. The objective is to create a genuine Single European Transport Area by eliminating all residual barriers between modes and national systems, easing the process of integration and facilitating the emergence of multinational and multimodal operators.

4.4 Food

The removal of technical barriers to trade (TBT) has been one of the major institutional factors affecting trade within the EU in the food industry. The principal mechanism for eliminating TBT in the EU is mutual recognition of existing standards whereby a product lawfully produced and sold in any of the EU Member States must be given free access to all other EU markets.

Mutual recognition is, however, not an option if there are significant differences in the initial standards of the countries. In such cases, some degree of standard harmonisation is a precondition for countries to allow products of other countries to access their markets. Specifically in the case of harmonisation of food regulations, the EU has sought to remove differences in national regulations on a common set of binding requirements in the form of detailed Directives for a single or group of products.

However, barriers remain which affects the export of food in the EU Single Market. Agriculture and foodstuff was the sector that saw the highest number of notifications issued with comments and/or detailed opinions (over the period 2010-11). Thus enforcement barriers in food relate mainly to technical barriers/mutual recognition.

Barriers result from regulations that affect the sale of goods in some markets by requiring specific product characteristics or production processes, for example, a certain package size for food products.

Several examples from SOLVIT Sweden show authorities often negative attitude towards mutual recognition of products authorized in other Member States. This is harmful to Nordic businesses as they are strong in food.

An example from the annual report of SOLVIT Sweden (2009) is the case of a Swedish company selling meat in Finland. There is a sales ban in Finland for all fresh meat products bearing a "best before" date mark, i.e. labelling applied in Sweden and many European countries. The Finnish Food Safety Authority prevented a Swedish company selling meat in Finland from using such labelling, and declared that labels had to be changed to a "use-by-date" marking to comply with Finnish law. Re-marking packages going to Finland would add perceptible extra work and costs.

As the example shows, there is still improper application of regulation 764, which creates technical barriers for free movement of goods within Member States. Though the regulation introduced several principles to enable mutual recognition such as a single contact point, and shift of burden-of-proof to the Member State, there are still issues with incorrect application.

Another example is found in the case of Danish VOLA, presented in Part 1 of this study. An innovation of VOLA is a safety cover around the fixture point where the tap connects with the piping. This is hidden in the wall of e.g. the bathroom. The safety cover makes sure that in the case of a leak around the fixture point, the water does not drip inside the wall but is led from back through the pipes eventually ending up in the drain. Nevertheless, the Swedish regulation BBR6:625, dictates that the fixture point between tap and pipe cannot be placed inside a wall, due to the risk of a water leak going undetected resulting in water inside the wall. But as the risk of leakage inside the wall is non-existent with VOLA solution, it should be allowed access to the Swedish market. This shows that innovations may be denied access due to national technical barriers.

4.5 Green technology

OECD member countries are increasingly taking greater account of environmental sustainability in public procurement. Through green procurement, member countries make an important contribution to sustainable consumption and production.

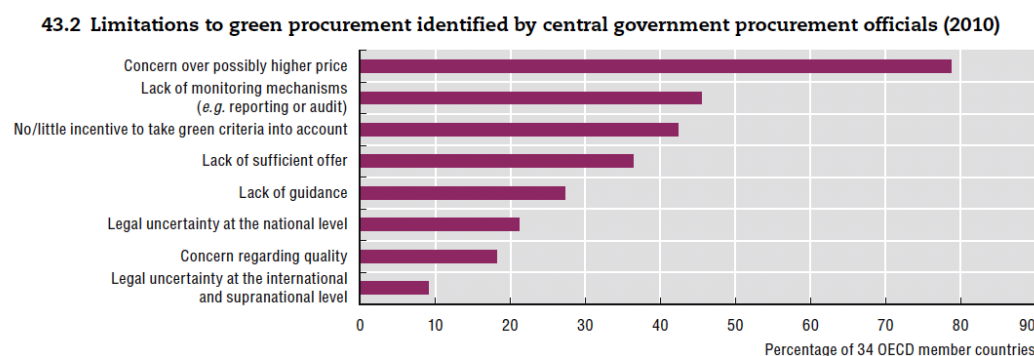
However, despite green policies being front and centre, half of OECD member countries have not established a standard definition for green procurement. Only six countries (Denmark, France, Italy, Japan, Luxembourg and Slovenia) incorporate a definition in the law, while the majority of the countries that have defined green procurement have done so in an environmental policy or strategy document.

In 2007, an OECD survey indicated that a common barrier to successfully implementing green procurement was a lack of know-how among procurement officials on how to achieve it. Codes of practice are not widespread as a guidance tool and have been adopted in only eight OECD countries (in 2010), namely Austria, Denmark, France, the Netherlands, Poland, Slovenia, Spain and Sweden.

A 2010 OECD Public Procurement Survey reveals that a number of barriers remain to implementing green procurement. The most common concern across OECD countries today is the possibility of higher prices (79%) resulting from more stringent environmental criteria.

Other limitations perceived are the lack of monitoring mechanisms (45%), the absence of incentives to take green criteria into account in procurement decision making (42%) and the lack of sufficient suppliers (36%).

Figure 9 Limitations to green procurement identified by central government procurement officials (2010)



Source: OECD 2010 Survey on Public Procurement.

Source: Government at a Glance 2011 - Green procurement

Other barriers to exporting clean technology in the Single Market

The EU has achieved significant results in designing Standards and Labelling (S&L) programmes. Common energy efficiency standards are now applied in e.g. several different housing appliance types such as refrigerators and washing machines. However, when it comes to monitoring and enforcing lack of compliance within the programmes, there is still work to be done.

Non-compliance continues to be a major factor limiting the effectiveness of S&L programmes.⁹ Results from an IEA workshop in 2008 suggested that non-compliance with S&L policies within *buildings and equipment* could be as high as 50 per cent.¹⁰ While there may be several reasons for the cause of this high rate of non-compliance, ineffective monitoring and enforcement is at the root of the problem. A survey among Member State authorities showed that very few records of actual enforcement actions were available suggesting that these actions occurs very infrequently.¹¹

There are at least four issues that reduce the effectiveness of enforcement:

1. No common approach to enforcement
2. Surveillance of green products is not high priority in Member States
3. Testing results are not recognised across borders
4. Court decisions are not recognised in other jurisdictions

No common approach to enforcement

Enforcement of S&L programmes is the Member States' prerogative. This basically implies that there are 27 different approaches to monitoring and enforcing S&L programmes. While a few Member States see monitoring and enforcement as a priority, most

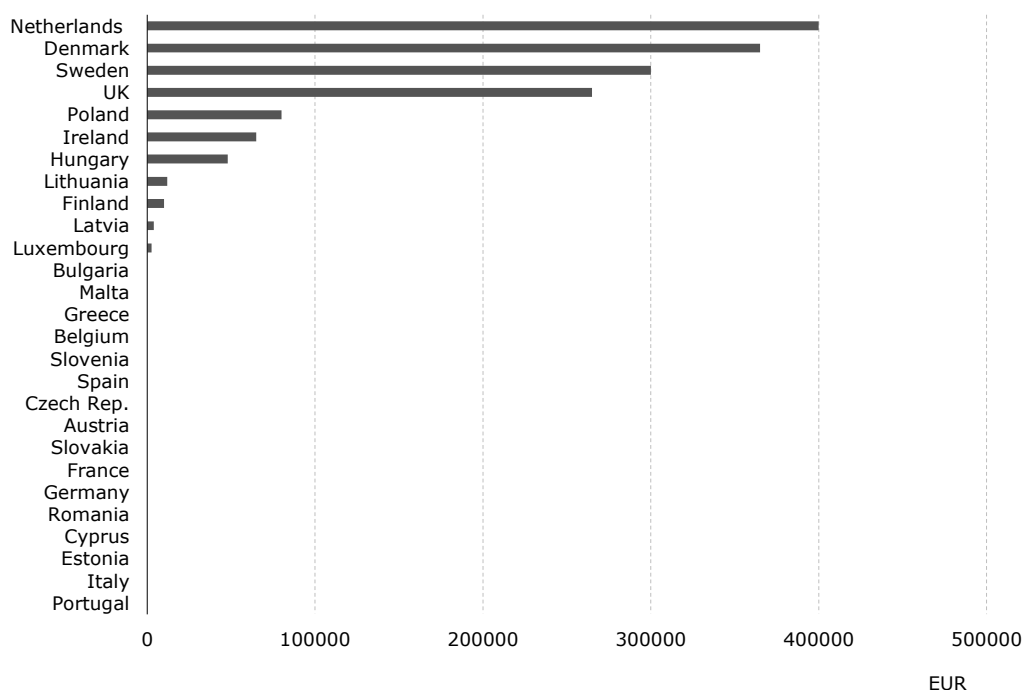
⁹ IEA (2010) page 11

¹⁰ IEA (2008b)

¹¹ Mark Ellis (2010). The authors also mention that a reason for the few available records may also be that authorities are poor at recording enforcement actions.

Member States do not. This is e.g. illustrated by the very large discrepancy between annual monitoring costs of the different Member States. Only four Member States have annual monitoring costs exceeding app €80,000, while the remaining Member States spend far less, cf. **Figure 10**.

Figure 10 Annual costs incurred by Member States in monitoring retailer compliance with Energy Labelling Directive



Source: Fraunhofer et al (2009)

The lack of a common approach to enforcement makes it very difficult to agree on common action. While the first Energy Labelling Directive was adopted in 1992, it was for example not until 2010 that it became possible to detain non-compliant foreign products in harbours.

Surveillance of 'green compliance' is not high priority in most Member States

As mentioned, agreeing on common Standards and Labelling programs is core EU policy, while monitoring and enforcement of such standards are Member States' prerogative. However, several indicators suggest that such surveillance actions are not prioritised highly in most Member States. As seen in **Figure 10** above, the majority of Member States spend very little resources in monitoring retailer compliance with the Energy Labelling Di-

rective. It has also been found that only a few Member States carries out regular and systematic controls of compliance with Energy Labelling directive with regard to correct classification.¹²

Costs of enforcement are typically seen as a barrier for having effective enforcement. As only a few programmes have defined budget allocations for post-deployment enforcement activities, there is a risk that these activities will be seen as additional to the initial programme and consequently compete with other aspects of the programme for resources.¹³ However, studies show that enforcing non-compliance is typically a much more cost-effective approach than seeking other abatement opportunities.¹⁴ In addition, as cost of monitoring and enforcement typically represent a relatively minor proportion of total programme costs, including them in the total budget from the beginning of an S&L programme may smooth the procedure when enforcement action is eventually warranted.¹⁵

A recent initiative called the European Ecodesign Compliance Project (Ecopliant), is in fact trying to put compliance with eco-efficiency higher on the agenda. As a consortium of different national authorities, Ecopliant will try to establish systems to coordinate monitoring and enforcement activities in the EU, and by disseminating knowledge and experience about best practice amongst market surveillance authorities.

Court decisions are not recognised in other jurisdictions

One significant impediment of effective enforcement of compliance is the fact that national court rulings are not recognised in other jurisdictions. This implies that even if a product is ruled not to be in accordance with the declared standard, this does not apply to other Member States. In theory, effective enforcement would need a court verdict in all EU legal systems.

An additional impediment to firms challenging each other's products is the limited sanction possibilities in most Member States. A few countries such as Netherlands and Slovakia have possibility of issuing quite large fines (450,000 and 166,000 respectively), cf. **Table 8**. On the other hand, several countries have fines in the order of magnitude where companies are most likely undeterred by the possibility of a fine.

¹² Fraunhofer et al (2009), page 127.

¹³ IEA (2010), page 1

¹⁴ IEA (2010), page 16

¹⁵ IEA (2010), page 13

Table 8 Range of fines available in EU countries

Country	EUR
Austria	Up to 25,435
Belgium	25 - 30,000
Bulgaria	150-1,500
Cyprus	8,500-17,000
Germany	50,000
Greece	2,000-15,000
Hungary	400-500
Latvia	700-1,400
Malta	446-23,294
Poland	Max 15 pct. of turnover
Portugal	75-2,992
Slovakia	166,000
Netherlands	450,000
UK	5,600

Source: ATLETE (2010)

In addition, information exchange between different authorities has so far been relatively limited. While such information exchange is more common within e.g. health issues such as e.g. dangerous toys, it is still less developed with respect to eco compliance.

Testing results are not recognised across borders

One major issue for companies doing business in several Member States is the fact that testing results are rarely recognised in other Member States. When a product is to be marketed in several Member States, it typically needs to go through cumbersome testing procedures in all the markets. In addition, testing laboratories do not typically have the required equipment to test all types of appliances concerned by the Energy Labelling Directive.¹⁶

One perceived barrier to recognising testing laboratories across Member States, is that these laboratories do not all meet the same requirements, e.g. with respect to international ISO standards. In order to achieve comparability of results, this calls for an overall improvement in European testing laboratories, especially with respect to raising the minimum requirements.

This is also relevant with respect to the broader topic of national incentives schemes. Such schemes are adopted nationally to provide an incentive to encourage certain product characteristic. In order for a product to qualify for a specific scheme, it must be tested for the individual features that are applicable to the scheme in question. The specific national requirements are typically not tested for in other Member States. This implies that for a product to be eligible for several different national incentive schemes, it must typically be

¹⁶ Atlete (2008). Deliverable 2.3, page 6

tested in several different testing facilities, hence giving rise to significant costs both directly and indirectly through delayed market introduction.

4.6 Computer, communications services and ICT goods

Computer and communications services is a sector in which rapid technology developments in recent years have resulted in increasingly complex national regulations in communications, which could potentially create barriers within the internal market.

An example is assistive ICT. The different requirements existing in the Member States concerning testing, post-sale assistance and maintenance of assistive ICT are seen as a barrier to operate directly cross-borders and make the choice of distributor compulsory.

Firms doing business across EU borders in communication/ICT have also had VAT problems. An example is e-invoicing, which lies at the crossroads of several areas of legislation – mainly VAT, accounting, payment, authentication, company transparency and data retention. This adds complexity to the implementation of any e-invoicing solution for both the supplier and buyer, as well as for the vendor or the service provider.

E-business activities also suffer from legal and administrative barriers in the European Union Member States, mainly being:

- **legal uncertainty**
- **non-compliance with requirements**
- **lack of confidence in the implementation of e-Business solutions**

However, though lack of mutual recognition and VAT issues may be a hindrance to Nordic communication firms doing business in the European market, the largest problem is most likely the lack of a digital Single Market.

The EU is still comprised of 27 individual digital markets rather than one, which puts the EU below its full potential. As a result, the EU economy is not exploiting the full benefits of the digital economy (cross-border online trade is low, ICT usage is low, and there are few global EU digital firms).

Europe could gain 4 per cent GDP by stimulating fast development of DSM by 2020, which corresponds to a gain close to €500 billion or more than €1.000 for every citizen. If Europe falls behind global competitors like the U.S., Japan and South Korea who are expanding the digitalisation of their economies, we risk missing out on a major boost to competitiveness.

This development is particularly harmful to Nordic businesses since they are strong in digital/communication.

4.7 Health care

Pharmaceutical products

The vast majority of the taxation business cases in SOLVIT in 2011 related to value-added tax (VAT) reimbursement. In particular, they involve situations where the application for refunding the VAT charged must be submitted to the local authorities of another Member State where the company is not established. The VAT issues have in some cases affected pharmaceutical products, as has some issues with mutual recognition. Medicinal products was an area which saw many problems reported to SOLVIT involving situations where the national regulations go beyond the relevant Directive/Regulation, by imposing additional requirements on products that had been certified in another Member State and that comply with the essential requirements imposed by EU legislation.

However, the biggest problem with pharmaceuticals is not the enforcement barriers identified in this study, but the presence of *parallel trade* and *reference pricing*, as the sector study below shows.

The pharmaceutical sector in Europe

Pharmaceutical spending is the third largest component of Member State health budgets. Cost of medicine varies considerably between Member States, with disparities of up to 25 % between the lowest and highest paying country. The sector is a major contributor to employment, with 633 100 employees in the pharmaceutical sector in the EU27, and to research and development, with EUR 26 billion invested in R&D in the EU27 each year.

Single Market challenges¹⁷

Consumers in high income countries have higher willingness to pay for pharmaceutical products than consumers in low income countries, since their budgets are overall higher. Pharmaceutical producers can therefore charge higher prices to these consumers, by leveraging their higher willingness to pay. Conversely, setting lower prices in low income countries allows producers to sell to more consumers. This *price differentiation* benefits consumers in low income countries who gain greater access to medicine, producers who increase their revenues, and efficiency from a market perspective.

However, two features of the EU Single Market, reference pricing and parallel trade, render price differentiation between countries impossible:

- **Reference pricing** – takes the price for a ‘basket’ of countries and sets a price based on the average, or on the lowest price.
- **Parallel trade** – the core of the Single Market which allows distributors to purchase goods in a Member State where prices are low, and re-sell them in a Member State where prices are high.

Reference pricing can lead to high income - and consequently high priced - Member States ending up in the same ‘basket’ as a low income and therefore low priced Member

¹⁷ Based on interview with industry representatives from AmCham Europe, June 2012

States. This provides pharmaceutical producers with disincentive to sell to low income countries, as it will bring down the average price. It could also lead to price conversions at a higher level for low income Member States, thus reducing their access to medicine. Another consequence may be that companies launch products with difference in timing: first in high paying countries and later in low paying countries to avoid reference pricing and parallel trade.

Single Market solutions

Possible solutions to the Single Market problem include:

- **Mitigation of parallel trade.** For example, pricing policy in Spain supports rebates for domestic consumption but not for re-exporting, thus offering a possibility to charge lower prices domestically without risking the products being sold abroad.
- **Using reference pricing with baskets consisting of 'equal income' countries.**
- **Ranking index where companies are rewarded for effort to enhance global access to drugs, such as the Netherland based Access to Medicine Index.**

Swedish health care exports

The Nordic countries, in particular Sweden, export services in health. Total Swedish exports of health services amounted to 13 billion Swedish kronor in 2006, equivalent to about 0.4 per cent of the Swedish GDP. The main export countries are found in the EU/EEA. In addition to the Nordic countries, the UK, France and Spain are countries where Swedish health care companies are represented.

Box 5 Swedish health care companies abroad

GAMBRO HEALTH CARE:

One of the world's leading providers of dialysis clinic services, with operations in 14 countries. Annually treats approximately 11,000 patients at 150 clinics.

CAPIO:

Operations in seven countries apart from Sweden. Operates 20 hospitals in England, about the same number in France and are have substantial business in Spain. Also operates in Norway, Denmark, Finland and Germany.

CAREMA, ALERIS & ATTENDO :

Operates primary health care centres and eldercare in Denmark, Norway and Finland.

Source: Webpages of respective companies

Box 6 The case of Capio

The Swedish Government has for a long time experimented with outsourcing of traditional public services to private companies. An interesting example is the private Swedish company Capio. Capio was started solely as a result of the public sector outsourcing of laboratory services from hospitals in the Swedish region Skaraborg 1994. In recent years, several Swedish regions has started to outsource healthcare which Capio have successfully taken over. When Stockholm decided to outsource the operations of the public hospital S:t Görans hospital ten years ago, Capio also won these contracts. In 2001, Capio acquired a hospital in England primarily for the treatment of patients with private insurance. A few years later, Capio took a step further and won a contract for the British health authorities to build and operate up to 10 new public hospitals. Capio has since contributed with innovation and competition in the internal market and is now active in five EU Member States. In 2006, Capio's exports of health services were about 10 billion SEK.

Source: Copenhagen Economics (2009): Offentlig Köpkraft som tillväxtmotor

Among all types of EU Single Market legislation, the problems with public procurement are arguably among the harder ones. The potential market is huge: there is still an enormous potential of cross-border competition for contracts and the economic welfare gains can be very substantial. Companies are typically reluctant to tender cross-border, even inside the EU (or EEA).

Public services, such as health services, are not extensively procured in the EU Single Market. Rather, these are typically supplied locally. For example, in the one-fifth of procurements published in TED in 2010 there is almost no tender for supply of goods and services to health. Compared to cross-border procurement in the private sector, there seems to be significant potential to increase the share of foreign suppliers in the public procurement process.¹⁸

A remaining issue is that the procurement Directives do not lay down an exhaustive set of procurement rules; they leave room for Member States' own rules, provided that these rules are consistent with the Directives. This means, for example, that Member States may adopt stricter rules than those in the Directives.

Another issue affecting firms bidding across borders – particularly in social services – is the application of the public sector Directive. The Directive applies to all types of procurement contracts (works contracts, supply contracts and services contracts). However, it does not apply fully to all services contracts. These are divided into priority services, which are subject to the Directive's full rules, and non-priority services, which are subject only to the Directive's rules on technical specifications, award notices and statistics (also called A-services and B-services, respectively). The priority services are listed in Annex IIA (e.g. IT services, consultancy and accountancy), and they have been selected on the basis of their potential scope for cross-border trade, potential savings and the availability of information on the services. Although coverage is broad, some contracts are excluded from the scope of the Directive. However, some Member States have opted for extending the Directive to areas not covered or only partially covered by the Directives. For example, some

¹⁸ London Economics, Ecorys, pwc (2011), Public procurement in Europe – cost and effectiveness.

Member States have extended the Directive to concessions, to annex B services, to social services or to contracts below the thresholds of the Directive. Indeed, many of the annual 150,000 notifications in TED are below-threshold contracts.

CEPS (2012) propose the following new legislative proposals to change the situation in public procurement:

'Extension of the regime to all services. The new proposals abolish the previous distinction between A services and B services. The new rules will apply to all services, with the exception of 'social services'. Member states will be free to determine which procedural rules will be applicable to the procurement of social services. The only compulsory requirement is to publish the contract notice and the contract award notice in the Official Journal of the EU.'

- **CEPS (2012) Enforcement in the EU Single Market, p. 95**

Enquiries and complaints in the field of public procurement have been increasingly treated within the new EU Pilot system since its introduction in April 2008. Indeed, there is a significantly higher use of EU Pilot in procurement than in other areas. Public procurement EU Pilot cases accounted for around 50% of all cases in the internal market and services from 2008 until 2010 (50% in 2010, 43% in 2009 and 50% in 2008), and the system has been used in a very proactive way, resulting in 90% of the EU Pilot cases being closed in 2009. The proposed reform aims to simplify and make more flexible the existing rules and procedures, encourage access to public procurement for SMEs, facilitate a qualitative improvement in the use of public procurement and complete the legal European public procurement framework.

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Table of Abstract

Series title, number and report code of publication: Nordic Innovation publication 2013:03		
Author(s): Christian Jervelund, Amanda Stefansdotter		
Organisation(s): Nordic Innovation & The Danish Business Authority		
Title (Full title of the report): Which enforcement barriers are hurting Nordic businesses?		
Abstract: This study summarizes the main findings from a previous Nordic Innovation study, Delivering a stronger Single Market (2012) and identifies the areas which have the largest impact upon Nordic business. The areas identified is the Service directive, mutual recognition and public procurement. This is especially harmful for Nordic service providers, food exporters and green technology producers. The study points on four areas for action: A stronger SOLVIT mechanism; a mechanism which should check against parallel national legislation when new EU laws is implemented; increased focus upon common European standardization and certification within services; and finally strengthen focus upon micro level implementation in the member states.		
ISBN: ISBN 978-82-8277-053-8 (Print) ISBN 978-82-8277-054-5 (Digital) (URL: http://www.nordicinnovation.org/publications)		Language: English
Name of Nordic Innovation funding program (if relevant):		Commissioned by (if relevant):
Name of project: Which enforcement barriers are hurting Nordic businesses?		Project acronym (if relevant):
Nordic Innovation project number: P 11100	Pages: 50	Date: October 2013
Keywords: Single market, enforcement, market barriers, services, public procurement, Nordic region		
Publisher: Nordic Innovation Stensberggata 25, NO-0170 Oslo, Norway Phone: +47 47 61 44 00 info@nordicinnovation.org www.nordicinnovation.org		Main contact person: Rasmus Wendt, Senior innovation adviser Nordi Innovation Stensberggata 25, NO-0170 Oslo, Norway r.wendt@nordicinnovation.org



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Which enforcement barriers are hurting Nordic businesses?

The Nordic region is particularly competitive in services, transport, food, green technology, communication services and equipment, machinery and health care services including pharmaceuticals. This leads to high exports in these industries which generates jobs and brings wealth to the region. Barriers to exports in these industries are thus particularly harmful for growth and wealth creation. We find evidence that a subset of these industries namely services, transport, food and green technology are facing barriers due to EU legislation that is not being applied as intended. For example, the existing public procurement directives ought to pave the way for non-discrimination between domestic and Foreign Service providers. Yet, it is not always the case, which an example of emergency service provider Falck demonstrates.

By taking the lead and push for better enforcement of existing EU legislation within these targeted industries in the other EU countries, the Nordic countries will directly strengthen the competitiveness of its businesses eventually leading to higher economic wealth. However, what is at least as interesting, but often overlooked, is that pushing for better enforcement within the Nordic region may indirectly increase economic wealth creation. The reason is that a level playing field in the Nordic countries provides a 'training' ground for Nordic businesses sharpening their offerings and production processes, stimulating innovation and supporting the build-up of larger businesses to name a few. This allows them to better compete in the EU - barriers or not - and even more importantly, to compete globally.

Nordic Innovation is an institution under Nordic Council of Ministers that facilitates sustainable growth in the Nordic region. Our mission is to orchestrate increased value creation through international cooperation.

We stimulate innovation, remove barriers and build relations through Nordic cooperation

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