



# TERRITORIAL SUPPLY CONSTRAINTS IN THE RETAIL TRADE IN BELGIUM, THE NETHERLANDS AND LUXEMBURG

Consequences for the Benelux internal market

## **Colophon**

### **Published by**

Thomas Antoine  
General Secretariat of the Benelux Union  
Rue de la Régence 39, BE 1000 Brussels  
[info@benelux.int](mailto:info@benelux.int)

### **Coordination**

Team Market of the General Secretariat of the Benelux Union

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# EXECUTIVE SUMMARY

The general, qualitative conclusions of this document are based on the data from a survey among retail enterprises in the Benelux countries. In the survey, companies present their own experiences and judgements, which means that the results mainly measure perceptions of the companies themselves. The data collected give a first, general picture of the phenomenon of territorial supply constraints (TSCs) in the retail trade in the Benelux. Based on the data, patterns and trends can be described, although the data may not be statistically significant. The survey was conducted in the three Benelux countries as of mid-October 2016 by the Benelux General Secretariat, the Belgian Federal Public Service Economy, the Dutch Ministry of Economic Affairs and Climate Policy and the Luxembourg Ministry of the Economy. This was done in cooperation with relevant sector organisations in Belgium, the Netherlands and Luxembourg.

***TSCs are found in in the retail trade in all Benelux countries. Both micro, small, medium-sized as well as large companies are faced with them.***

TSCs have been observed in Belgium, the Netherlands and Luxembourg. Among the participating firms facing TSCs are companies of all sizes. It concerns both independent and dependent companies, as well as firms involved in store-based sales, e-commerce or a combination of both.

***TSCs affect a wide range of products and retail businesses.***

TSCs have been observed in many segments of the retail market and in a wide range of products - including food, books and paperware, drugstore- and personal care products, electronics, decoration, furniture, paint, bicycles, kitchen appliances, sports equipment and jewellery.

***TSCs have clear effects on consumer prices, the range of products and services offered, the profit margins of retailers, as well as on the quality, delivery time and characteristics of products.***

Between 67-77% of respondents indicated that TSCs had a negative impact on consumer prices (increase), the product range (restriction) and profit margins of their businesses (decrease). In addition, between 44 - 50% of the participating companies indicate that they adversely affect the quality of products, delivery times and product characteristics.

***Only a limited number of companies manage to overcome TSCs.***

The reactions of companies to absorb or mitigate the effects of TSCs seem to be limited to parallel imports - 33% of the participating companies use them. Other reactions are hardly mentioned.

***Data from Luxembourg suggest that TSCs are not limited to the retail trade only.***

Data collected in Luxembourg suggest that TSCs also affect businesses outside the retail trade. Data on companies outside the retail trade were collected only in Luxembourg. They are not described in this document, nor are they included in the statistical analysis conducted in this document.



# INTRODUCTION: TERRITORIAL SUPPLY CONSTRAINTS AND THE BENELUX



## TERRITORIAL SUPPLY CONSTRAINTS (TSCs) IN THE BENELUX

Studies have shown that, in the Benelux, the supply of goods and the level of prices vary greatly depending on where you are<sup>1</sup>. This also applies to the border regions in Germany and France, where consumer prices are often lower than in the neighbouring Benelux countries. This may have negative consequences for both consumers and retailers in the Benelux. In some cases, consumers pay more than in neighbouring countries, the product range is reduced and businesses are becoming less competitive.

It is difficult to explain part of the price differences, if at all, using common factors, such as differences in labour costs, differences in tax rates / excise duties or rental prices. There are indications that part of this price difference could be explained by territorial supply constraints. *Territorial supply constraints are limitations imposed by a supplier that hinder you to obtain goods freely, particularly in countries of their choice*<sup>2</sup>. Such constraints allow segmenting the market and can result in significant wholesale price differences between countries<sup>3</sup>.

<sup>1</sup> Among others: Analysis of prices - Annual report 2013 of the National Accounts Institute (Belgium, FPS Economy, 2013); Price level in the Supermarkets (Belgium, FPS Economy, 2012); Analyse comparative des prix de produits identiques dans les grandes surfaces alimentaires au sein de la Grande Région (Luxembourg, Ministère de l'Économie, 2014); Grocery prices in the Euro area: findings from the analysis of a disaggregated price dataset, (European Central Bank, 2015). A list of studies can be found at the end of this publication.

<sup>2</sup> It concerns the definition used in the survey underlying this report. The complete, more detailed definition can be found in the survey form and the list of definitions (see annexes).

<sup>3</sup> Green Paper of 31 January 2013 on unfair trading practices in the business-to-business food and non-food supply chain in Europe (COM/2013/037 final).



**Large  
company**

“Because Benelux countries still have their own specific rules with regards to labelling, promotional communication, bottle return systems etc., it is relatively easy for manufacturers to effectively divide the market and adjust the price levels of their products to the purchasing power of local consumers and to the level of competition in a given retail market in the Benelux... A stop could be put to this practice by facilitating retailers to negotiate one set of prices and conditions across the internal market, or to source across the border in the country where the products are offered at the best price. Tearing down these barriers within the Benelux and the EU would significantly lower the sourcing costs of branded products for retailers. And it would ultimately benefit consumers across the Benelux...”

So far, registering TSCs openly and in a quantitative way has proved difficult. Quantitative and qualitative data and public information about concrete cases of TSCs are very rare, if they exist at all<sup>4</sup>. This can probably be explained by the fact that the issue is approached with caution and restraint by the affected retailers, perhaps even with fear (a “fear factor”), which is the result of often one-sided power relations and dependencies between traders and supplying companies. Commercial considerations may also play a role. This restraint also hinders in-depth investigations and, thus, also the development of policy initiatives at national, Benelux and European level. The development of policy is further complicated by the legal discourse surrounding the question of whether, and if so when, TSCs are legally permissible. In this context, therefore, reference is made to authorised and unauthorised TSCs.



## **BACKGROUND TO THE BENELUX SURVEY ABOUT TERRITORIAL SUPPLY CONSTRAINTS IN THE RETAIL TRADE**

The “Benelux Action Plan for Jobs and Growth”, launched by the prime ministers of the three Benelux countries in April 2015, aims to remove remaining barriers to an internal retail market for businesses and consumers. In this context, it is proposed, inter alia, to tackle TSCs together<sup>5</sup>. Acting upon this, in November 2015, the Benelux Ministers for Economic Affairs signed the “Benelux recommendation on territorial supply constraints in the Benelux”<sup>6</sup>.

In this recommendation, the Benelux countries commit to drawing up a clear analysis of TSCs in the supply chain of the Benelux retail markets and, if necessary, to finding solutions for TSCs at Benelux level. In the document, it is decided to examine as a first step the “nature and scope of, and impact on the supply chain of the retail markets”. The survey, the main results of which are presented in this document, implements this intention.

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<sup>4</sup> A recent case that may involve TSCs concerns the beer brewer AB InBev. In June 2016, the European Commission opened formal antitrust proceedings into AB InBev’s practices affecting the Belgian beer market. In this context, in November 2017, the European Commission sent the company a statement of objections, alleging that it was hindering cheaper imports of beer to Belgium ([http://europa.eu/rapid/press-release\\_IP-17-5041\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5041_en.htm)).

<sup>5</sup> Benelux Summit Joint Declaration 2015, “A Benelux Action Plan for jobs and growth” (29 April 2015).

<sup>6</sup> Recommendation of the Committee of Ministers concerning territorial supply constraints in the Benelux (M(2015)14) (see annex).

As a follow up, the three countries can decide to take coordinated, adequate steps at Benelux level. These can be of a legal or non-legal nature. The Benelux cooperation provides the instruments to do so and the recommendation leaves room for this.

### European context

The activities of the Benelux Union in relation to TSCs are complementary to the European Union's work in this area. The European Commission refers to TSCs in various documents. For example, the topic is discussed in policy documents on unfair trading practices<sup>7</sup> and is mentioned in the context of internal market policy and retail policy<sup>8</sup>. The issue is also raised anew, next to others, in the European Commission's recent public consultation on retail trade<sup>9</sup>. At European level however, this has so far not led to a specific survey or analysis of territorial supply constraints, nor to concrete policy proposals or initiatives.

In addition to the possible launch of own initiatives, the Benelux Union, with this inquiry into the nature and scope of TSCs in the Benelux, also wants to make a contribution regarding the content of the debate at European level. Systematic qualitative research of some magnitude into the problem is yet to be carried out. In that sense, the Benelux survey is a first.



## 1.3 THE SURVEY AND ITS PARTICIPANTS

### The survey

The qualitative survey was launched in mid-October 2016 by the General Secretariat of the Benelux Union, the Belgian Federal Public Service Economy, the Dutch Ministry of Economic Affairs and Climate Policy and the Luxemburg Ministry of the Economy. The survey focused on retail businesses and was strictly confidential. The main objective of the survey is to collect qualitative data on the nature and scope of TSCs in the Benelux countries in order to obtain qualitative insights and to be able to draw conclusions on TSCs in the Benelux. In the survey, enterprises are asked about their experiences and their own judgements. The results therefore mainly measure the companies' own perceptions.

In order to have the widest possible reach among companies in the retail sector, the development and implementation was carried out in cooperation with relevant sector organisations in the three countries. The survey was mainly answered online, but some answers were given in paper versions. The forms were available in Dutch, French, German and English. At the request of the participating countries, the deadlines for replying to the survey varied from one country to another. In Luxemburg, the survey was closed in December 2016, while in Belgium and the Netherlands, it was concluded in April 2017.



**Micro  
company**

"These restrictions go far beyond the mere fact that people do not have access to certain products. Certain distributors take advantage of this situation to assert their power and impose their will on small traders (minimum sales volumes, imposed secondary products, etc.). In addition, the emergence of e-commerce exacerbates the problems linked to these restrictions, because consumers ultimately buy wherever they want."

<sup>7</sup> Among others, the "Green Paper on unfair trading practices" (COM (2013)37 final) and the "Study on the legal framework covering business-to business unfair trading practices in the retail supply chain" (DG MARKT/2012/049/E). A list of European (policy) documents can be found at the end of this publication.

<sup>8</sup> Among others the European Commission's communication "Upgrading the Single Market: more opportunities for people and business" (COM(2015) 550 final).

<sup>9</sup> Public consultation on "retail regulations in a multi-channel environment" (17 July – 8 October 2017).

## The participating companies

During this period, a total of 66 Benelux companies participated in the survey - 12 from Belgium, 10 from the Netherlands and 44 from Luxemburg<sup>10</sup>. The population of the survey can be described as follows:

- 42 micro and small enterprises (64%), 6 medium-sized enterprises (9%) and 18 large enterprises (27%)<sup>11</sup>. In Belgium and the Netherlands respondents are predominantly large companies, while in Luxemburg, the vast majority of responses come from medium-sized, small and micro businesses.
- 80% of all participating companies consider themselves as independent. In Belgium and the Netherlands, this is true for 50% and 60% respectively, while in Luxemburg, this applies to 93% of the enterprises.
- The companies represent a very wide spectrum in the retail sector. They include, among others, companies that trade in food, sports articles, drugstore products, furniture, clothing, shoes, do-it-yourself products, bicycles, kitchens and kitchen equipment, cosmetics, leather goods, and cleaning machines and products (non-exhaustive enumeration).
- Respondents include companies that sell exclusively through physical stores or e-commerce, but also companies that use a combination of both (multi-channel). It is noteworthy that only 35% of the companies are involved in e-commerce. In the Netherlands, however, this was 100%. In Belgium and Luxemburg this was 42% and 18%, respectively.

Given the general reluctance and caution on the part of companies with regard to TSCs, the number of participants and the survey itself can be regarded as a success. Even if they may not be statistically significant, the data allow to identify general trends concerning TSCs in the Benelux.

Despite the strict confidentiality of the survey, reluctance could also be detected among some of the respondents. This was reflected in their answers. Half of the companies chose to participate anonymously. This percentage was roughly the same in all three countries. In addition, respondents regularly chose not to answer a questions at all (i.e. not to provide an answer) or chose to answer a questions with the option “prefer not to answer” that was explicitly provided in the survey.

In certain segments of the retail market, some companies with large market shares (‘large market players’) participated in the survey. As a result, these replies covered a significant proportion of these market segments. Finally, the Belgian and Luxemburg retail trade organisations both underlined in a letter the importance of TSCs for the sector and supported the survey (see annex). Also the Dutch sector organisation recognises its importance in various documents<sup>12</sup>.

As additional information, it should be noted that the survey in Luxemburg was broader than just the retail sector. The survey form used, however, was identical. In Luxemburg, the survey also covers other activities, particularly the crafts and services sector. This resulted in 22 additional responses from, among others, construction, crafts, pharmacies and (para) medical companies, agriculture and wholesalers. These results will not be discussed in this document and the responses are not used in the statistical analysis. However, the additional replies showed that TSCs in Luxemburg are not limited to retail trade. The Luxemburg Ministry of the Economy will analyse these replies and results separately.

<sup>10</sup> Some reactions were also received from third countries. These are not included in the report.

<sup>11</sup> Based on the definition used in the European Economic Area (European document C(2003) 1422, Article 2). See annex.

<sup>12</sup> See, among others, “A shopping list for Europe - creating a better European retail environment” (Detailhandel Nederland, 2014), where territorial supply constraints are mentioned as a policy priority for Europe (page 16).





# 02

## THE RESULTS



### 2.1

### THE NATURE AND SCOPE OF TERRITORIAL SUPPLY CONSTRAINTS IN THE BENELUX RETAIL TRADE

#### The scope

Of all the companies participating in the survey, 89% indicated that they were affected by TSCs. 11% of the respondents explicitly indicated that TSCs do not affect them. As stated earlier in this document, TSCs are present in a very wide spectrum of the retail sector. The respondents included companies that trade in food, sports items, drugstore products, furniture, clothing, shoes, do-it-yourself articles, bicycles, kitchens and kitchen equipment, cosmetics, leather goods, and cleaning machines and products (non-exhaustive enumeration). In Luxemburg, it has also become clear that TSCs also occur outside the retail trade<sup>13</sup>.

Slightly more than half of the respondents (52%) also mention that they know about other companies facing TSCs. Not surprisingly, the sectors mentioned in this respect tend to correspond with the sector in which the respondents themselves are active. 23% stated that they were unable to answer the question about other companies faced with TSCs. Finally, 17% explicitly responded that they know of no other companies that are faced with TSCs.

The wide variety of retail companies affected by TSCs is reflected in the product groups concerned. In addition to the product categories 'groceries and beverages (processed foods)', 'electronic products', 'clothing', 'medicinal products, perfumery, care products', 'books and stationery', 'raw materials' and 'intermediary products', all of which were explicitly indicated in the survey form, respondents reported a significant number of items under the heading 'other'. This ranges from toys, paints, packaging materials, bicycles and bicycle parts, sports equipment, jewellery, household and kitchen equipment, right through to umbrellas and suitcases (non-exhaustive enumeration).

<sup>13</sup> TSCs outside the retail trade, however, are not further dealt with in this document.

## The impact

When asked about the consequences of TSCs, the replies of the participating companies provide the following picture for the Benelux as a whole:

- Prices: 77% reply that they lead to higher prices for consumers
- Profit margins: 71% reply that they lead to lower profit margins for their companies
- Product and service range: 67% reply that they lead to a more limited offer by their company



Micro company

“Consumers do not benefit at all from lower VAT rates in certain countries as a result of imposed sales prices”

The percentages for each of the three indicators mentioned above are (rather) high in the three Benelux countries. As regards prices, 75% (BE), 50% (NL) and 84% (LU), for margins 67% (B), 40% (NL) and 80% (LU). For product range, this was 58% (BE), 60% (NL) and 71% (LU) respectively.

As well as affecting prices, profit margins and range, TSCs may also have a bearing on other factors:

- Quality of products/services: 50% indicate that the quality is declining as a result of TSCs
- Delivery time: 45% reply that delivery time is increasing as a result of TSCs
- Product characteristics: 44% indicate that their products do not have the characteristics requested by the customer as a result of TSCs (e.g. the language of a product supplied or the exact equipment of a product)



Small company

“The purchase (of a particular product (editor’s note)) from a reseller (a retailer (editor’s note)) of the same product in Germany is cheaper than the direct purchase from the producer”

The percentages for these three indicators broken down by country are: for quality 33% (BE), 40% (NL) and 57% (LU), for delivery time 25% (B), 30% (NL) and 55% (LU) and for product characteristics 25% (BE), 40% (NL) and 50% (LU), respectively.



Large company

“Some qualities are not available (due to TSCs (editor’s note))”

“The level of after-sales service is not always the same”



Micro company

“German items with Dutch-language user instructions (for a French-speaking market due to TSCs (editor’s note))”

The survey also asked companies to make quantitative *estimates* of the impact of TSCs on consumer prices and the limitation of the product range, and also to estimate how many suppliers applied TSCs. The most important results are as follows:

- Higher consumer prices: estimated price increases vary considerably, but are almost entirely<sup>14</sup> in the range of 5-50%. In Belgium, the spectrum is 5-35% (median 12.5%), in the Netherlands 5-40% (median 12.5%) and in Luxembourg 0-50% (median 14.5%).

<sup>14</sup> One Belgian respondent indicated that the price differences are in the range of 20-150%.

- A smaller range of products and services: also the limitation of the range is estimated within a broad spectrum of 0-50%. This means that companies claiming to be adversely affected by TSCs estimate that their own product range is smaller than if there were no TSCs. The estimated decrease in their own product range is between 0 and 50%. In Belgium, the estimate was 2-10% (median 5%), in the Netherlands 0-20% (median 2.5%) and in Luxemburg 0-50% (median 15%). 20% of the respondents indicated that TSCs did not affect offer.
- Share of suppliers involved: the estimate of the proportion of suppliers that apply TSCs varies widely. In Belgium, the percentages are between 1 and 3%. One Belgian respondent, however, indicated a percentage of 100% (median 2.5%). In the Netherlands, the percentage is estimated at 2-5% (median 3.75%). Finally, Luxemburg has percentages between 2-100%, with high estimates of 50, 70, 80 and 90% being identified on a regular basis (median 40%)<sup>15</sup>.



Large company

“However, even if a limited number of suppliers impose TSCs (around 2-3%), these suppliers still represent more than 10% of the total sourcing value. TSCs are mainly used by multinational brand suppliers”

The fact that companies find it difficult to make such estimates might be deduced from the relatively high number of respondents indicating that they “do not know” (for price 26%; for range 35%; for suppliers 26%). Only a few companies do not answer the questions about one or more of the three indicators at all. Moreover, respectively 6% (price), 7.5% (range) and 4.5% (number of suppliers) of all respondents indicate that they “rather not say”, which may possibly be due to the “cautious stance” companies have when dealing with the subject of TSC.



Large company

“(TSCs lead to (editor’s note)) distortion of competition vis-à-vis international online players”

<sup>15</sup> Under the header “suppliers”, it is important to note that the percentage of suppliers who apply TSCs does not automatically reflect the effect on a company. After all, the percentage of suppliers does not say anything about the value (in absolute terms or as a percentage of the total purchase costs and/or total turnover of the company) that these suppliers provide. For example, one supplier may account for a large percentage of the purchase costs and/or turnover of a company.

## 2.2

# LEGITIMISATION OF TERRITORIAL SUPPLY CONSTRAINTS AND REACTIONS FROM ENTERPRISES

### Reasons for TSCs

The survey asked the participating companies about the reasons given by their suppliers for applying TSCs. The reply form presented the respondents with a number of reasons that suppliers could use to legitimise TSCs. In addition respondents could mention “other” reasons, not listed in the survey. The replies of the participating companies<sup>16</sup> gave the following results:

- The logistical optimisation of distribution for the products concerned 33%
- The market in which your company is active involves higher costs (e.g. due to higher labour, transport- or advertising costs and labelling requirements) 23%
- Compared with neighbouring countries, the demand in your country is different (e.g. as a result of consumer preferences, variations in living standards, the position of the brand in the market) 21%
- The tax system varies from that of the neighbouring countries 20%
- Other 23%
- No reason specified 30%

“Logistical optimisation” is thus, by far, the reason most frequently cited by respondents, that suppliers use to legitimise TSCs. The second main argument is ‘a different cost structure in your market’, closely followed by ‘differences in demand’ and ‘differences in tax regime’. The reasons mentioned under ‘other’ could often be classified under the first four reasons mentioned above or referred to ‘exclusivity of contracts’ or ‘the internal organisation of the firm or company internal policy’. No less than 30% of the companies indicate that suppliers do not give reasons for applying TSCs.

### Reactions to territorial supply constraints

As a reaction to TSCs, one third of the participating companies (33%) rely on parallel imports (for the definition of parallel imports used in the survey, see annex). In doing so, they particularly seek to supply themselves in a cheaper way (95%) and/or to increase their product range (27%)<sup>17</sup>. Other reactions to mitigate the effects of TSCs are hardly given. Occasionally, ‘enlarging the range of products and services’ (*finding alternatives for products (editor’s note)*), ‘seeking alliances with other companies’ and ‘exerting pressure and providing information’ were mentioned

These data could be an indication that companies may feel that they currently have little, or no, legal or practical means of doing anything against TSCs, other than parallel imports. In addition, individual companies may also be reluctant to take action.



Large company

“(My company (editor’s note)) is sometimes hindered from applying parallel imports, because imports are prohibited, limited (in quantity) or even sanctioned by the national supplier of a brand. Moreover, parallel imports can be hampered by differences in packaging or labelling requirements or slightly different ingredients (in products (editor’s note)) that may result in other EAN codes ...”

<sup>16</sup> Respondents could give multiple answers.

<sup>17</sup> To the question what the company is hoping to achieve with parallel imports, several answers were possible at the same time.



## CONCLUSIONS

As described, the general, qualitative conclusions below are based on the data from a survey among retail companies in the Benelux countries. In the survey, companies present their own experiences and judgements, which means that the results mainly provide perceptions of the companies themselves.

As of mid-October 2016, the survey was conducted by the Benelux General Secretariat and the Ministries of Economic Affairs of the Benelux countries in the three Benelux countries. This was done in collaboration with the sector organisations COMEOS (Belgium), Detailhandel Nederland (Netherlands) and the Confédération Luxembourgeoise du commerce (CLC) (Luxembourg). Participation in the survey was on a voluntary basis, strictly confidential and the survey was predominantly answered online by the companies.

The data collected give a general picture of the phenomenon of TSCs in the retail trade in the Benelux. Although the data might not be statistically significant, they allow to describe patterns and trends.

***TSCs are found in in the retail trade in all Benelux countries. Both micro, small, medium-sized as well as large companies are faced with them.***

TSCs have been observed in Belgium, the Netherlands and Luxembourg. Among the participating firms facing TSCs are companies of all sizes. It concerns both independent and dependent companies, as well as firms involved in store-based sales, e-commerce or a combination of both. More than half of the participating companies also mention that they know of other companies facing TSCs.



**Large  
company**

“(My company (editor’s note)) proposes to include in European legislation a “non-discrimination” clause for producers similar to such a clause in the Services Directive, which means that service providers may not discriminate on the basis of nationality or place of establishment, unless it can be objectively legitimised”

***TSCs affect a wide range of products and retail businesses.***

TSCs have been observed in many segments of the retail market and in a wide range of products - including food, books and paperware, drugstore and personal care products, electronics, decoration, furniture, paint, bicycles, kitchen appliances, sports equipment and jewellery.

***TSCs have clear effects on consumer prices, the range of products and services offered, the profit margins of retailers, as well as on the quality, delivery time and characteristics of products.***

Between 67-77% of respondents indicate that TSCs have a negative impact on consumer prices (increase), the product range (restriction) and profit margins of their businesses (decrease). As regards price levels, the estimated price increases due to TSCs range from 5 to even 50%, with certain differences between countries (maximum 35% in Belgium, 40% in the Netherlands and 50% in Luxembourg). Estimates of the reduction of one's own product range vary from 0 to 50%. Here too, there are large differences between countries, from a maximum of 10% in Belgium, 20% in the Netherlands and 50% in Luxembourg.

As for profit margins, 71% of respondents indicate that these were declining due to territorial supply constraints<sup>18</sup>. Finally, between 44 and 50% of the participating companies indicate that TSCs adversely affect the quality of products (50%), delivery times (45%) and product characteristics (44%)<sup>19</sup>.

***Only a limited number of companies manage to overcome TSCs.***

The reactions of companies to absorb or mitigate the effects of TSCs seem to be limited to parallel imports - 33% of the participating companies use them. Other reactions are hardly mentioned. Amongst them there are no legal instruments. This could be an indication that (practical) legal instruments may not be available, are not sufficiently appropriate or do not achieve the desired results, and that as a result parallel imports are currently the only practical response.

***Data from Luxembourg suggest that TSCs are not limited to the retail trade only.***

Data collected in Luxembourg suggest that TSCs also affect businesses outside the retail trade. Construction (-related) companies and companies in the wholesale and (para)medical sector indicated that they were affected. Data on companies outside the retail trade were collected only in Luxembourg. They are not discussed in this document, nor are they included in the statistical analysis conducted in this document. The Luxembourg Ministry of the Economy will analyse the results of these replies separately.

<sup>18</sup> Estimates of the extent of the decrease of profit margins are not available.

<sup>19</sup> More detailed data per country are not available.

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# METHODOLOGY

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## The organisation of the survey

In mid-October 2016, the survey was launched by the Benelux General Secretariat and the Ministries of Economic Affairs of the Benelux countries in the three Benelux countries simultaneously. It was targeting companies in the retail trade and participation was strictly confidential. The main objective of the survey was to collect data on the nature and scope of TSCs in the Benelux countries in order to obtain qualitative insights. In the survey, companies are asked about their experiences and their own judgements. The results therefore mainly measure the companies' own perceptions.

In order to reach companies in the retail sector, the development and implementation was carried out in cooperation with relevant sector organisations in the three countries. The survey was mainly answered online. Survey forms (see annex) were available in Dutch, French, German and English. At the request of the Benelux countries, the deadlines for replying to the questionnaires varied from one country to another. In Luxemburg, the survey was closed in December 2016, while in Belgium and the Netherlands, it was concluded in April 2017.

In Luxemburg, the survey was distributed not only in the retail sector. It also covered other sectors, particularly crafts and the service sector. This resulted in 22 additional responses from, among others, construction, crafts, pharmacies and (para) medical companies, agriculture and wholesalers. These results will not be discussed in this document and the answers are not used in the statistical analysis. Nevertheless, the additional replies show that TSCs in Luxemburg are not limited to the retail trade. The Luxemburg Ministry of the Economy will analyse these replies and results separately.

## Feedback and its analysis

The survey included a total of 66 retail companies - 12 from Belgium, 10 from the Netherlands and 44 from Luxemburg<sup>20</sup>. The quality of the replies varied - from forms completed fully and precisely to partially completed forms.

Despite the confidentiality of the survey, half of the respondents participated anonymously. This could possibly be due to questions being perceived as difficult (e. g. companies were asked to provide a quantitative estimate of the impact of TSCs on the prices of their products) or possibly to commercial confidentiality of data, and the caution/'fear factor' surrounding the issue of TSCs. In the statistical analysis, anonymous responses were considered as replies from a retail company.

In some cases answers were at first sight unclear or even contradictory. For example, some companies reported that they were not affected by TSCs, but subsequently provided detailed answers in later questions on the impact of TSCs on their businesses. Such cases have been analysed on a case-by-case basis, assessed and integrated into the data. This lack of clarity may be attributable to the abstract, somewhat theoretical, nature of the concept of TSCs<sup>21</sup> and to questions being experienced as difficult (e. g. about the impact of TSCs on prices, profit margins, etc.).

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<sup>20</sup> Reactions were received even from third countries. These are not included in the report.

<sup>21</sup> As an introduction to the questions, the survey form contained a description / definition and examples of TSCs.

# STUDIES AND ANALYSES ON PRICE LEVELS AND EXPLANATORY FACTORS FOR PRICE DIFFERENTIALS

## Belgium

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- Jaarverslag 2013 van het Prijzenobservatorium, blz. 77 en verder, “Vergelijking van het consumptieprijsniveau voor bewerkte levensmiddelen in België, Duitsland, Frankrijk en Nederland”,  
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# ANNEX 1- SURVEY FORM



## Definition of territorial supply constraints (TSCs):

*"Territorial supply constraints are limitations imposed by a supplier that hinder you to obtain goods freely, particularly in countries of your choice."*

In the Green Paper issued by the European Commission on unfair trading practices<sup>1</sup> territorial supply constraints are defined as:

*"Territorial supply constraints imposed by some multi-national suppliers may impede retailers from sourcing identical goods cross-border in a central location and distributing them to other Member States". When they effectively control the logistic or wholesale level, major branded goods manufacturers may have no direct interest in reducing prices and will try to negotiate contracts at national level to maintain price differences. [...] Retailers in small Member States suggest that when they seek to source supplies from non-domestic wholesalers or even directly from suppliers in more competitive and attractively-priced neighbouring markets, they are redirected to the subsidiary responsible of that particular geographical market or their national wholesalers who have territorial contracts with the suppliers. Such constraints allow segmenting the market and can result in significant wholesale price differences between countries."*

### Example of how territorial supply constraints impact on "price":

A retailer from country A is able to sell identical brand-products to the consumer at prices that are much lower than the sales prices in market B. Retailers from country A can apply these lower consumer prices because they buy stock from a supplier that applies lower prices. Retailers from country B are excluded from directly buying from this supplier due to territorial supply constraints. In extreme cases consumer prices are sometimes even lower than the purchase price that companies from country B must pay to the supplier that is responsible for market B.

### Examples of how territorial supply constraints impact on the "offer" available:

A consumer from country A would like to buy a football shirt from his favourite club from the football league of country B, in a shop in his city. The retailer explains the consumer that he cannot supply the football shirt because the manufacturer/distributor who is responsible for market A does not supply the product to the store owner. The item is only intended for market B. Moreover, due to territorial supply constraints, the retailer from country A cannot procure stock directly from the manufacturer/distributor responsible for market B.

<sup>1</sup> Green Paper of 31 January 2013 on unfair trading practices in the business-to-business food and non-food supply chain in Europe (COM/2013/037 final).

<sup>2</sup> Note that territorial supply constraints in this context are defined as a prohibition for suppliers to sell to resellers, which by themselves seek to source from the supplier. It is not considered to be a territorial supply constraint when, for instance, a distributor that has been given an exclusive territory in a certain geographic area is protected from active sales of other distributors into this area.



## Survey on 'territorial supply constraints' in the Benelux

### Confidentiality

If you participate in this survey, you are protected by a confidentiality clause. Your participation in this survey is voluntary and anonymous. Your answers will remain confidential. Your participation and/or answers will not be reported on an individual basis. Personal identification on the basis of your participation or answers will not be possible. The data gathered through this survey will be analysed and published in a general manner; no names will be connected to the data.

For the full text of the confidentiality clause please refer to the end of the survey form.

### Company information

Number of full time equivalents (FTEs) in your country (2015 or if this is unavailable, most recent year):

Fewer than 10     Between 10 and 49     Between 50 and 249     More than 250

Annual turnover in your country (2015 or if this is unavailable, most recent year):

Less than 2 million euros     Between 10 and 50 million euros  
 Between 2 and 10 million euros     Over 50 million euros

My company:

- is an independent company
- is a franchise company
- depends on a parent company in the Benelux (subsidiary, branch, etc)
- depends on a parent company outside the Benelux (subsidiary, branch, etc)
- has another commercial form

(optional) Please provide your parent company's country of origin: \_\_\_\_\_

Does your company engage in e-commerce?

Yes     No

NACE code for the company (or, if you don't know the code, describe the company's main activities): \_\_\_\_\_

**Question 1: Relevance of TSCs**  
Does your company encounter such territorial supply constraints?

Yes  
 No  
 I don't know

Are you aware of other companies that encountered such territorial supply constraints?

Yes, particularly in this sector(s): \_\_\_\_\_

No  
 I don't know

**Question 2: Impact of TSCs**  
According to you, what are the most important consequences of such territorial supply constraints for your company's activities? Please tick the corresponding box.

**Question 2.a - Direct impact on offering and price**

|  | Yes                      | No                       | I don't know             |
|--|--------------------------|--------------------------|--------------------------|
| The range of products and services that my company can offer to customers is more limited (some products and services are not available, etc.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The consumer price of products and services from my company is higher  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The margin for my company on these products and services is lower  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (please provide details):  |                          |                          |                          |

**Question 2.b: Indirect impact of TSCs**

|  | Yes                      | No                       | I don't know             |
|--|--------------------------|--------------------------|--------------------------|
| Delivery times for products and services increase  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The quality of products and services decreases (e.g. customer service (after-sales service) is not in line with the specific needs of the national/local market) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The products and services do not possess the features required by the customer (e.g. another language, a different set-up)                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (please provide details):  |                          |                          |                          |

**Question 3: Response from your company to TSCs**

Does your company engage in parallel imports?<sup>3</sup>

If yes, due to these parallel imports, are you able to:

expand your company's range of products and services  
 buy at a cheaper price  
 other (please provide details): \_\_\_\_\_

Other reactions that could mitigate the consequences of territorial supply constraints (please provide details): \_\_\_\_\_

**Question 4: Examples and quantifying the impact of TSCs**

**Question 4a - Examples of products/services that are affected by territorial supply constraints**  
Please provide concrete examples of the type of products and services that you cannot offer directly or can only offer at a higher price as a result of territorial supply constraints :

- I don't know  
 I'd rather not say
- Medicinal products, perfumery, care products  
 Raw materials  
*Please specify:* \_\_\_\_\_
- Groceries & drinks (processed foods)  
 Intermediary products  
*Please specify:* \_\_\_\_\_
- Clothing  
 Electronic products  
 Books and stationery  
 Other (please provide details): \_\_\_\_\_

<sup>3</sup> The website "Juridischwoordenboek.nl" defines: parallel import as follows: the import of goods via an importer that has not been appointed to do so by the manufacturer. Or, in other words: Trade by third parties in (branded) items, without intervention or supervision from the (brand) owner, manufacturer, official importer or otherwise acknowledged distribution channel.





#### **Confidentiality clause**

Your participation in this survey is voluntary and anonymous. Your answers will remain confidential. Your participation and/or answers will not be reported on an individual basis. Personal identification on the basis of your participation or answers will not be possible. The data gathered through this survey will be analysed and published in a general manner; no names will be connected to the data.

Providing your contact details via the survey form is optional. Your details will only ever be used to contact you to gain clarification of your answers.

The survey is conducted in the framework of the collaboration between Belgium, Luxembourg and the Netherlands on the basis of the Treaty establishing the Benelux Union. More specifically the survey is part of the implementation of [Recommendation M \(2015\) 14](#) of the Benelux Committee of Ministers on territorial supply constraints in the Benelux. This concerns an intergovernmental collaboration, which implies that your contact details or individual answers will never be passed onto any organisations other than the governments that are directly involved (see below).

Your answers will only be used in the light of investigation as set forth in article 1.2.a of the aforementioned Recommendation M (2015) 14. It concerns the nature/scope and consequences of territorial supply constraints on the supply chain for retailers in the Benelux. Your answers will not be used for any other purposes nor will they be passed onto third parties.

All information that is shared with the General Secretariat of the Benelux Union, whether directly or national bodies of the Benelux countries, is inviolable on the grounds of the Protocol on the privileges and immunities of the Benelux Union.

The General Secretariat of the Benelux Union and the national governments of the Benelux countries respect your privacy in line with the prevailing national legislation. You may consult your personal details provided via this survey, may check them to ensure they are accurate and have any possible errors corrected.

#### ***Who is responsible for processing the details obtained?***

**Benelux Union:**  
Wim Martens, General Secretariat of the Benelux Union ([w.martens@benelux.int](mailto:w.martens@benelux.int))

**Belgium**  
Mathias Ingelbrecht, FPS Economy ([mathias.ingelbrecht@economie.fgov.be](mailto:mathias.ingelbrecht@economie.fgov.be))  
Valérie Hablis, FPS Economy ([valerie.hablis@economie.fgov.be](mailto:valerie.hablis@economie.fgov.be))

**Luxembourg**  
Patrick Wildgen, Ministry of Economic Affairs ([patrick.wildgen@eco.etat.lu](mailto:patrick.wildgen@eco.etat.lu))  
Pierre Thielen, Ministry of Economic Affairs ([pierre.thielen@eco.etat.lu](mailto:pierre.thielen@eco.etat.lu))

**The Netherlands**  
Derk Bonthuis, Ministry of Economic Affairs ([d.d.bonthuis@miniez.nl](mailto:d.d.bonthuis@miniez.nl))

# ANNEX 2 – BENELUX RECOMMENDATION ON TERRITORIAL SUPPLY CONSTRAINTS (M(2015)14)



## RECOMMANDATION

du Comité de Ministres Benelux

relative aux restrictions territoriales de l'offre dans le Benelux

M (2015) 14

Le Comité de Ministres Benelux,

Vu l'article 6, alinéa 2, sous g), du Traité instituant l'Union Benelux, en corrélation avec l'article 2, alinéa 2, sous a), du même Traité,

Considérant que l'achèvement du marché intérieur européen constitue un élément essentiel de l'intégration dans le cadre de l'Union européenne; auquel les pays Benelux attachent une importance prioritaire, comme l'ont confirmé les chefs de gouvernement des pays Benelux réunis le 29 avril 2015,

Considérant que les chefs de gouvernement des pays Benelux ont en outre exprimé, le 29 avril 2015, leur volonté de renforcer la coopération relative au marché intérieur dans le cadre de l'Union Benelux et en particulier dans le domaine du commerce de détail, y compris en ce qui concerne les restrictions territoriales de l'offre sur ce marché,

Considérant que les restrictions territoriales de l'offre dans la chaîne d'approvisionnement des marchés de détail peuvent constituer une barrière à l'efficacité de ces marchés et des obstacles à leur intégration au niveau de l'Union européenne, et des sources de surcoûts pour les entreprises et les consommateurs, par des niveaux de prix plus élevés et des limitations de l'offre de produits et de services,

Considérant que les restrictions territoriales injustifiées de l'offre constituent des exigences discriminatoires fondées sur la nationalité ou le lieu de résidence du destinataire d'un bien ou service et qu'elles érigent ainsi des barrières supplémentaires à la fourniture transfrontalière de marchandises et entravent potentiellement la concurrence dans la chaîne d'approvisionnement des marchés de détail, au détriment des consommateurs et entreprises au sein du Benelux,

Considérant qu'à l'heure actuelle, des initiatives concrètes n'ont pas encore été prises au niveau européen en réponse aux questions des pays Benelux et d'une multitude de acteurs des secteurs concernés en matière de restrictions territoriales de l'offre éventuellement injustifiées dans la chaîne d'approvisionnement des marchés de détail,

Considérant qu'une multitude des acteurs du secteur du commerce de détail indiquent que la coopération Benelux pourrait éventuellement offrir une solution à cet égard, dans l'attente de possibles initiatives au niveau européen,

Considérant que des études dont celles des observatoires des prix du Royaume de Belgique et du Grand-Duché de Luxembourg, et de la Banque centrale européenne attestent d'importants écarts de prix entre les pays Benelux et avec certains pays voisins, et que les effets frontaliers des restrictions territoriales de l'offre sur la chaîne d'approvisionnement des marchés de détail pourraient influencer le niveau des prix,

Recommande :

## Article premier

1. En matière de restrictions territoriales de l'offre, en vue de promouvoir des conditions d'approvisionnement équitables sur le marché intérieur pour les consommateurs et les entreprises au sein du Benelux, les pays Benelux tendent à une coopération plus étroite afin de réaliser une analyse claire de la problématique dans la chaîne d'approvisionnement des marchés de détail dans les pays Benelux et de dégager, le cas échéant, des pistes de solutions aux problèmes identifiés.

2. Dans le cadre de l'alinéa 1<sup>er</sup> ci-dessus, en particulier les points suivants sont examinés conjointement en matière de restrictions territoriales de l'offre :

a) La nature et l'ampleur des restrictions territoriales de l'offre ainsi que leurs conséquences pour la chaîne d'approvisionnement des marchés de détail des pays Benelux et, le cas échéant, les éventuelles pistes de solutions ;

b) La compatibilité des restrictions territoriales de l'offre avec les principes de la libre circulation des biens et services et les règles de concurrence dans la mesure où ces restrictions affectent les consommateurs et entreprises au sein du Benelux, par exemple en cas de restriction du commerce parallèle ;

c) La nécessité et les possibilités de supprimer, dans le cadre de l'Union Benelux, les entraves intra-Benelux qui pourraient en résulter sur le marché d'approvisionnement ;

d) La nécessité et les possibilités pour les parties prenantes de communiquer de manière informelle et confidentielle aux instances existantes dans chaque pays Benelux des informations relatives à des restrictions territoriales de l'offre supposées injustifiées ;

e) La nécessité, les possibilités et les moyens de transmission d'informations pour le secteur privé, en collaboration avec les organisations représentatives des professionnels et des consommateurs concernés.

3. Les gouvernements, les administrations et les autorités de contrôle concernés des pays Benelux sont invités à :

a) Se concentrer régulièrement dans le cadre de la mise en œuvre de la présente recommandation et d'en faire rapport au Conseil Benelux, notamment sur la suite à donner à la coopération visée à l'alinéa 1<sup>er</sup> ;

b) Examiner si, et le cas échéant de quelle manière, d'éventuelles prochaines études pertinentes pourraient être davantage coordonnées afin que leurs résultats puissent être mieux comparés ;

c) Concernant les restrictions territoriales de l'offre, dans la mesure où celles-ci entravent le bon fonctionnement du marché intérieur, intervenir conjointement, si possible, dans les discussions pertinentes au sein des institutions de l'Union européenne.

**Article 2**

Le Secrétariat général Benelux est invité à :

- a) Faciliter et soutenir la concertation visée à l'article 1<sup>er</sup>, alinéa 3, sous a) ;
- b) Coordonner et soutenir la coordination d'éventuelles études prochaines visée à l'article 1<sup>er</sup>, alinéa 3, sous b), et, si cela s'avère souhaitable, formuler des propositions pour lancer de nouvelles initiatives de recherche au niveau Benelux ;
- c) Le cas échéant, à la suite de la mise en œuvre des dispositions de l'article 1<sup>er</sup>, alinéa 2, sous d), jouer un rôle de facilitateur, à l'échelle Benelux, dans la collecte et la structuration d'éventuelles informations communiquées au niveau national et dans l'éventuelle collaboration entre les instances nationales concernées ;
- d) Appuyer l'échange d'informations et de points de vue entre les pays Benelux concernant les restrictions territoriales de l'offre, en vue de la mise en œuvre des dispositions de l'article 1<sup>er</sup>, alinéa 3, sous c).

**Article 3**

La présente recommandation entre en vigueur le jour de sa signature.

Fait à Bruxelles, le 30 novembre 2015.



Le président du Comité de Ministres,

**Article 3**

La présente recommandation entre en vigueur le jour de sa signature.

Fait à Bruxelles, le 30 novembre 2015.

Le président du Comité de Ministres,

*(à signer par le Président conformément à l'article 12, alinéa 1<sup>er</sup>, du Règlement d'Ordre intérieur du Comité de Ministres)*



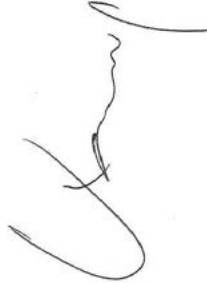
Fait à Bruxelles, le 30 novembre 2015.

Pour le Royaume de Belgique :



K. Peeters

Pour le Grand-Duché de Luxembourg :

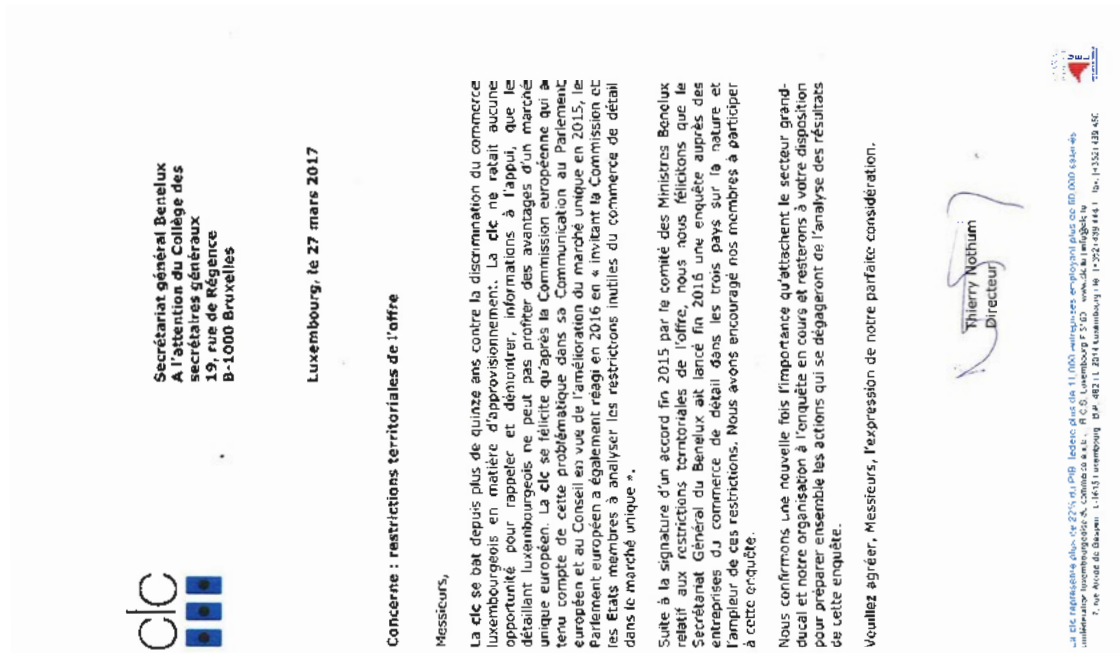


E. Schneider

Pour le Royaume des Pays-Bas :

H. Kamp

# ANNEX 3 – SUPPORT LETTERS COMEOS AND CLC





## ANNEX 4 - DEFINITIONS



### **Definition of territorial supply constraints (TSCs) (as used in the survey):**

*Territorial supply constraints are limitations imposed by a supplier that hinder you to obtain goods freely, particularly in countries of your choice.*

In the Green Paper issued by the European Commission on unfair trading practices<sup>22</sup> territorial supply constraints are defined as: *“Territorial supply constraints imposed by some multi-national suppliers may impede retailers from sourcing identical goods cross-border in a central location and distributing them to other Member States<sup>23</sup>. When they effectively control the logistic or wholesale level, major branded goods manufacturers may have no direct interest in reducing prices and will try to negotiate contracts at national level to maintain price differences. [...]*

*Retailers in small Member States suggest that when they seek to source supplies from non-domestic wholesalers or even directly from suppliers in more competitive and attractively-priced neighbouring markets, they are redirected to the subsidiary responsible of that particular geographical market or their national wholesalers who have territorial contracts with the suppliers. Such constraints allow segmenting the market and can result in significant wholesale price differences between countries.”*

### Example of how territorial supply constraints impact on “price”:

A retailer from country A is able to sell identical brand-products to the consumer at prices that are much lower than the sales prices in market B. Retailers from country A can apply these lower consumer prices because they buy stock from a supplier that applies lower prices. Retailers from country B are excluded from directly buying from this supplier due to territorial supply constraints. In extreme cases consumer prices are sometimes even lower than the purchase price that companies from country B must pay to the supplier that is responsible for market B.

### Examples of how territorial supply constraints impact on the “offer” available:

A consumer from country A would like to buy a football shirt from his favourite club from the football league of country B, in a shop in his city. The retailer explains the consumer that he cannot supply the football shirt because the manufacturer/distributor who is responsible for market A does not supply the product to the store owner. The item is only intended for market B. Moreover, due to territorial supply constraints, the retailer from country A cannot procure stock directly from the manufacturer/distributor responsible for market B.

### **Definition of parallel import (as used in the survey):**

the import of goods via an importer that has not been appointed to do so by the manufacturer. Or, in other words: Trade by third parties in (branded) items, without intervention or supervision from the (brand) owner, manufacturer, official importer or otherwise acknowledged distribution channel.

<sup>22</sup> Green Paper of 31 January 2013 on unfair trading practices in the business-to-business food and non-food supply chain in Europe (COM/2013/037 final).

<sup>23</sup> Note that territorial supply constraints in this context are defined as a prohibition for suppliers to sell to resellers, which by themselves seek to source from the supplier. It is not considered to be a territorial supply constraint when, for instance, a distributor that has been given an exclusive territory in a certain geographic area is protected from active sales of other distributors into this area.

**Definition of micro, small and medium-sized enterprises adopted by the European Commission (Recommendation C(2003) 1422**

*Article 1*

Enterprise

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

*Article 2*

Staff headcount and financial ceilings determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

### **Acknowledgements**

In the context of the implementation of the survey and the preparation of this document, a special word of thanks goes to Igor Magdalenic and Nathalie Pint of the Belgian retail organisation COMEOS, Margriet Keijzer of Detailhandel Nederland, Thierry Nothum at Confédération Luxembourgeoise du Commerce, the staff members of the Luxemburg Chambre de commerce, Chambre de métiers and the Fédération des artisans in Luxemburg, and finally to Frédérique Douwes at the Benelux Union.

### **Useful references / links**

- Benelux Union - <http://www.benelux.int>
- Belgium, Federale Overheidsdienst Economie – <http://economie.fgov.be>
- COMEOS - <https://www.comeos.be>
- The Netherlands, Ministerie van Economische Zaken en Klimaat – <https://www.rijksoverheid.nl/ministeries/ministerie-van-economische-zaken-en-klimaat>
- Detailhandel Nederland - <http://www.detailhandel.nl>
- Luxembourg, Ministère de l'Économie – <http://www.gouvernement.lu/meco>
- Confédération Luxembourgeoise du commerce (CLC) – <http://www.clc.lu>
- Chambre de commerce – <http://www.cc.lu>
- Chambre de métiers – <http://www.cdm.lu>
- Fédération des artisans – <https://www.fda.lu>

### **Contact**

- Benelux: Wim Martens - [w.martens@benelux.int](mailto:w.martens@benelux.int)
- Belgium: Valérie Habils - [valerie.habils@economie.fgov.be](mailto:valerie.habils@economie.fgov.be), Mathias Ingelbrecht - [Mathias.Ingelbrecht@economie.fgov.be](mailto:Mathias.Ingelbrecht@economie.fgov.be)
- The Netherlands: Niek Steendam- [N.B.Steendam@minez.nl](mailto:N.B.Steendam@minez.nl), Willem Verschoor – [W.Verschoor@minez.nl](mailto:W.Verschoor@minez.nl)
- Luxemburg: Pierre Thielen - [Pierre.Thielen@eco.etat.lu](mailto:Pierre.Thielen@eco.etat.lu), Patrick Wildgen - [Patrick.Wildgen@eco.etat.lu](mailto:Patrick.Wildgen@eco.etat.lu)



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**General Secretariat of the Benelux Union**

Rue de la Régence 39 • BE-1000 Brussels • T +32 (0)2 519 38 11 • [info@benelux.int](mailto:info@benelux.int) • [www.benelux.int](http://www.benelux.int)