



ANALYSIS

Beyond Gold-Plating

Getting national implementation
right in the Single Market

October 2026

Summary

The EU's renewed focus on competitiveness has returned the functioning of the Single Market to the centre of attention. Recently, the European Commission proposed a toolkit to identify and prevent gold-plating: national rules, requirements or procedures that go beyond or are more burdensome than the underlying EU act.

The main takeaway of this analysis is that problems must be classified, measured and addressed in different steps. Similar costs for businesses may have different legal causes and require different remedies. Legal classification must therefore be kept separate from the assessment of economic effects. The analysis distinguishes between national top-ups, incorrect or disproportionate implementation or application of EU law (including diverging national interpretations) and administrative fragmentation. The specific obligations imposed on businesses and private persons, rather than the regulatory regime as a whole, should be the starting point for the assessment.

The National Board of Trade Sweden proposes a diagnostic toolkit accompanied by a five-step questionnaire to identify the type of gold-plating measure at stake. It examines the level of harmonisation of the relevant EU legislation and its requirements, whether the national measure is compatible with EU law, whether it is necessary and proportionate to attain legitimate objectives, and how it affects cross-border operators. The assessment should also cover the complete user journey, including administrative procedures, forms, fees and digital services. This analysis is a prerequisite to determine the type of remedy available. The diagnosis should determine whether national rules and practices need to be corrected (through enforcement or further harmonisation), simplified, or coordination at EU-level. Evidence from existing mechanisms, including notification procedures, SOLVIT and Commission complaints, should lead to effective corrective action where needed. Digital tools and AI can support the mapping of national differences, but cannot replace legal assessment or the need for independent national Single Market enforcement functions with the capacity to investigate and correct breaches of EU law.

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1 Why gold-plating needs a closer look

Europe's renewed focus on competitiveness has returned the functioning of the Single Market to the centre of the political agenda. Faced with increasing geopolitical and economic pressure, the EU has identified simpler rules, reduced regulatory burdens, and more consistent implementation and enforcement as essential for improving business conditions. These priorities align with Sweden's simplification agenda.

Against this backdrop, 'gold-plating' has become shorthand for national implementation that exceeds EU requirements or renders compliance unnecessarily burdensome.

When national requirements, interpretations, or administrative procedures differ, businesses must adapt to each market. This increases costs, reduces predictability, and hinders cross-border trade, particularly for SMEs.

Such differences arise from various sources: the design and degree of harmonisation in EU legislation, lawful national choices, the cross-border aspects of national rules in unharmonised areas, or incorrect implementation and administrative practice. While these situations affect businesses similarly, they differ legally and require distinct responses.

The European Commission's plan to develop a practical toolkit for Member States to identify and prevent regulatory gold-plating is timely. This toolkit will play a crucial role in addressing these challenges.

The National Board of Trade Sweden works to ensure a well-functioning internal market and to promote uniform implementation and the correct application of EU law. In developing this announced toolkit, we highlight the following **key messages**:

- **Establish a common legal classification framework** to define different types of gold-plating and distinguish them from other sources of national fragmentation. Create a separate system for assessing their specific economic effects on the internal market.
- **Clearly define the remedies available** for each type of gold-plating at both national and EU levels.
- Ensure that data from ex-ante scrutiny and ex-post case evidence inform **national and EU enforcement capacities**. National administrative practices or laws identified as gold-plating must lead to an appropriate remedy or effective correction.

2 Legal structures behind gold-plating

The European Commission's forthcoming toolkit of best practices and criteria aims to help Member States identify and prevent regulatory gold-plating.¹ Gold-plating is part of the broader compliance deficit in the internal market: EU law is applied through national, regional, and local administrations, while supervision remains centralised within the Commission.²

The Commission's 2026 Communication, A Simpler, Clearer and Better Enforced EU Rulebook, defines gold-plating as national implementation that introduces a wider scope, stricter rules, or more burdensome procedures than the underlying EU act requires. The proposed toolkit and the Simplification Platform will examine national, regional, and local application. Different forms of national divergence must be categorized correctly to ensure the EU avoids addressing the wrong problems with ineffective remedies.³

Even when EU rules are in place, they may leave room for national differences and, in some cases, even reinforce such divergence. Gold-plating should therefore be seen in the broader context of what has been termed false harmonisation.⁴ EU acts vary in their degree of harmonisation. Some regulate matters exhaustively (maximum harmonisation), while others set minimum standards, preserve options, or leave procedures, sanctions, and language requirements to Member States (minimum harmonisation). Optional exemptions represent a grey area: If an EU act allows certain categories to be excluded and a Member State does not use that option, the act's default scope remains. Member States may also interpret legal terms derived from EU law differently. These differences in national implementation and application can fragment the Single Market.

Some matters remain unregulated by EU law (unharmonised). Measures taken in these areas may still restrict free movement and must comply with the Treaties, necessity, proportionality, and mutual-recognition rules, though the diagnosis differs.

National administrative practices or laws that create barriers or fragmentation arise from different underlying EU acts. Each requires a distinct remedy and, where EU law is applied incorrectly, an institution capable of delivering it.

An EU toolkit must provide a common framework for identifying the precise underlying type of EU law and the specific national obligation. A single national regime may

¹ The President of the European Commission, Ursula von der Leyen, has even mentioned a “pact against gold-plating” in her State of the Union 2026. [State of the Union 2026 – Quotes and initiatives](#).

² National Board of Trade, *For a Single Market Ombudsman in every EU State* (2022).

³ European Commission, A Simpler, Clearer and Better Enforced EU Rulebook, COM(2026) 380 final, 28 April 2026; European Commission, Simplification Platform.

⁴ Enrico Letta, *Much More Than a Market: Speed, Security, Solidarity – Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens*, p. 125; Removing such fragmentation after it has arisen is resource-intensive. It may require repeated efforts through mechanisms such as SMET, notification procedures and enforcement action. It is therefore preferable to prevent unnecessary fragmentation when EU legislation is designed and implemented rather than to remove established national barriers afterwards.

contain EU requirements, express options, autonomous rules and administrative practices. The correct unit of analysis is the obligation, not the regime as a whole.

Economic effects must be separated from this legal classification. A lawful choice may still fragment the market, while an administrative practice may be unlawful or disproportionate. While businesses experience the cumulative burden, public authorities must identify the legal cause to select the appropriate remedy.

3 How national divergence affects businesses

A common EU rule does not automatically produce a uniform market experience. Businesses face a chain involving EU law, national legislation, agency guidance, forms, portals, evidence requirements, fees, inspections, local permits and processing times. Divergence at any point can require separate product versions, duplicate registrations, translations, or repeated contact with authorities. The resulting fixed costs and delays weigh heavily on SMEs.

4 Our proposed toolkit on gold-plating

The categories below are diagnostic and not exclusive; they may overlap. The diagnostic framework should distinguish between legal classification, practical burden, and remedy, rather than simply asking if gold-plating exists. The toolkit may also assist Member States in assessing national legislation that does not derive from EU law, including its compatibility with EU requirements and potential to create market barriers. Unlawful differences require strengthened enforcement tools, whereas lawful differences require alternative remedies. Our proposed diagnostic toolkit assists Member States when regulating to implement EU legislation:

Table 1. Proposed diagnostic toolkit

Diagnosis	What it covers	Main response
National top-up	A national rule or procedure adds obligations not required by the underlying EU legislation. It may be lawful under minimum harmonisation or incompatible with maximum harmonisation or Treaties.	Make it transparent, assess costs, benefits, necessity and proportionality, consider alternatives and set a review date.
Incorrect or disproportionate implementation or application, diverging national interpretation of EU legislation	Legislation, guidance or an individual decision misreads a provision within an EU legislative act or creates an unjustified restriction according to the Treaties.	Correct national rules or practice, use guidance, appeals, SOLVIT, judicial review or Commission enforcement. National functions need capacity to pursue effective correction.
Administrative fragmentation	Forms, portals, duplicate evidence, local procedures, processing times, fees or non-statutory demands create barriers without a clear legislative top-up.	Redesign procedures through one-stop shops, common forms, interoperability, predictable deadlines, training and oversight.

Some examples on how gold-plating can look in practice include:

- **The EU Fertilising Products Regulation** preserves certain stricter pre-existing national cadmium limits⁵, creating divergence. Member states gold-plate when they implement these stricter requirements (top-up gold-plating).
- The Enforcement Directive on **posting of workers** permits Member States to require measures including a declaration and a contact person.⁶ National frameworks vary considerably in how these procedures function (express national discretion gold-plating).
- **The EU Waste Framework Directive** requires an electronic register for hazardous waste, while national rules determine reporting deadlines and sanctions⁷ (**diverging interpretation and administrative fragmentation**).

The National Board of Trade's proposed diagnostic questionnaire:

1. Is there underlying EU secondary legislation, and what is the level of harmonisation?
2. What does the relevant provision of the underlying EU legislation require, (for example a permit or exemption)?
3. Is the national requirement in line with the underlying EU secondary legislation?
4. Is the national requirement necessary and proportionate, in combination with obligations arising from the underlying EU legislation?
5. What effects does the national requirement have on cross-border economic operators? If costs are quantified, is the counterfactual correct and based on proportionate implementation rather than the absence of regulation?

⁵ Article 3(2) Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products

⁶ Article 9(1) Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

⁷ Article 35 Directive 2008/98/EC on waste and repealing certain Directives (Waste Framework Directive); article 1(3) Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union.

5 Objectives for the EU toolkit

Classify before counting and map obligation by obligation: require Member States to identify material national choices and process them through the toolkit.

Test national choices as businesses experience them: Use existing mechanisms.

Notification procedures⁸ and proportionality assessments for regulated professions provide ex-ante information. SOLVIT and Commission complaints provide ex-post evidence. The toolkit should evaluate complete user journeys, including guidance, forms, evidence, fees, and digital design.⁹

Match the diagnosis with a corresponding remedy: National choices must be transparent, justified, and reviewed.

Build decentralised enforcement capacity: The current division, where EU law is applied locally but in general and by default supervised centrally, is unworkable. The National Board of Trade proposes a decentralization reform: each Member State should designate an independent national Single Market enforcement function to monitor the application of EU law. This function should rely on independence, proximity to day-to-day application, effective sanction mechanisms (such as the right to bring cases before national courts) and EU-level coordination. A Commission-coordinated network for these functions is recommended. These functions should examine legislation and administrative practice, investigate complaints and systemic problems, act on their own initiative, obtain information across public administrations, and pursue correction. Subject to national procedural rules, it should be able to bring or support cases before national courts when voluntary correction fails. National functions should address incorrect or disproportionate application complementing, rather than replacing the Commission's role.

Use digital and AI tools for screening: AI can compare texts, flag divergence and link implementation data. However, it cannot determine the level of harmonisation, assess necessity and proportionality or reveal how a procedure functions in practice.

Feed implementation evidence back into EU lawmaking: Where lawful national divergences create substantial costs, authorities must consider common forms and databases, standard clauses, mutual recognition, or, where proportionate, more complete harmonisation.¹⁰

⁸ Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification); Directive 2006/123/EC on services in the internal market.

⁹ Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification); articles 15 and 39 Directive 2006/123/EC on services in the internal market; Directive (EU) 2018/958 on a proportionality test before adoption of new regulation of professions; National Board of Trade. Reference number 2018/02005-2. "Framtagande av åtgärder på inre marknadsområdet inför tillträdande kommission – Förslag till åtgärder för en förbättrad inre marknad" (kap. 3.3 Överväg att införa motiveringsskyldighet vid Överimplementering).

¹⁰ National Board of Trade Sweden, *Addressing Fragmentation for a Global Circular Economy: Lessons from the EU Single Market* (2024), European Commission, *The Single Market: our European home market in an uncertain world*, COM(2025) 500 final.

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Sammanfattning på svenska

Summary in Swedish

EU:s förnyade fokus på konkurrenskraft har åter satt den inre marknadens funktion i centrum. Europeiska kommissionen har aviserat en verktygslåda för att identifiera och undvika nationell överreglering¹¹: nationella regler, skyldigheter eller förfaranden som går utöver eller är mer betungande än den bakomliggande EU-rättsakten kräver.

Analysens huvudbudskap är att problemen måste klassificeras innan de mäts och åtgärdas. Liknande kostnader för företag kan ha olika rättsliga orsaker och kräver därför olika lösningar. Analysen skiljer mellan nationella tilläggskrav, felaktigt eller oproportionerligt införlivande, genomförande eller tillämpning av EU-rätten samt administrativ fragmentering, exempelvis skilda formulär, beviskrav, avgifter och handläggningstider. Den enskilda skyldigheten, inte regelverket som helhet, bör vara utgångspunkten för bedömningen.

Kommerskollegium föreslår ett diagnostiskt verktyg, där ett frågeformulär i fem steg hjälper att diagnostisera rätt. Det klarlägger EU-rättsaktens harmoniseringsnivå och krav, om det nationella kravet är förenligt med EU-rätten, nödvändigt och proportionerligt samt vilka effekter det får för gränsöverskridande verksamhet. Bedömningen bör omfatta företagens hela praktiska resa. Diagnosen ska sedan styra valet mellan nationell översyn, administrativ förenkling, EU-samordning eller harmonisering och verkställighetsåtgärder. Underlag från befintliga mekanismer, däribland Solvit, bör kunna leda till faktisk rättelse. Digitala verktyg och AI kan stödja kartläggningen men inte ersätta den juridiska bedömningen eller behovet av stärkt nationell kapacitet att säkerställa en korrekt tillämpning av EU-rätten.

¹¹ Europeiska kommissionens meddelande *Ett enklare, tydligare och bättre genomdrivet EU-regelverk*, COM(2026) 380.

The National Board of Trade Sweden is the government agency for international trade, the EU internal market and trade policy. Our mission is to facilitate free and open trade with transparent rules as well as free movement in the EU internal market.

Our goal is a well-functioning internal market, an external EU trade policy based on free trade and an open and strong multilateral trading system.

We provide the Swedish Government with analyses, reports and policy recommendations. We also participate in international meetings and negotiations.

The National Board of Trade, via SOLVIT, helps businesses and citizens encountering obstacles to free movement. We also host several networks with business organisations and authorities which aim to facilitate trade.

As an expert agency in trade policy issues, we also provide assistance to developing countries through trade-related development cooperation. One example is Open Trade Gate Sweden, a one-stop information centre assisting exporters from developing countries in their trade with Sweden and the EU.

Our analyses and reports aim to increase the knowledge on the importance of trade for the international economy and for the global sustainable development. Publications issued by the National Board of Trade only reflect the views of the Board.

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